

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:

Lane Brothers LLC, Dan and John Lane

Agent: Innovative Construction LLC, David Powell

Owner/Applicant(s) Mailing Address: **10 Adams Drive, Wilmington, VT 05363**

Address of the subject property: **167 Route 100 North, Wilmington, VT 05363**

Tax Map: # **021200008.000**

A copy of the request is filed in the office of the Board and is referred to as: **#2016- 083**

Description of Case per Public Notice:

Application # 2016-083; Owner: Lane Brothers, LLC (Dan and John Lane). Agent: Innovative Construction, LLC (David Powell). Application being made for a Conditional Use review to allow a manufacturing facility (Woodworking Shop). Commercial/Residential zoning district: Sections 450 E (4), 710, 721, 722, 723, 730 &, 732(F). Location: 167 Route 100 North.

Notice for a public hearing was published in the Valley News on: **October 20, 2016**

Notice was posted in three public places on: **October 20, 2016**

A copy of the notice was mailed to the applicant on: **October 20, 2016**

A copy of the notice was mailed to the abutters on: **October 20, 2016**

A public hearing was held on **November 7, 2016**

There was no Site Visit.

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: January 1, 2017

Approval expires on: December 1, 2019

In *addition* to the Applicant/Agent the following persons, the following presented testimony on behalf of the Applicant or an Interested Person:

1. Jim Stratner, business partner

EXHIBITS

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

1. Application consisting of 4 pages including Abutters List
2. Clock Tower Complex Plot Plan
3. Clock Tower Complex Ariel Photo
4. FEMA Flood Insurance Rate Map Panel 338 of 652, Rte. 100 N

SYNOPSIS

The applicant proposes to provide woodworking services from 167 Route 100 North, to include:

- Office space,
- Indoor storage for tools and supplies
- A woodworking shop,
- parking for 4
- A sign (to be reviewed separate from this application by the Zoning Administrator).

APPLICABLE DISTRICT

Finding of Fact: Subject property is identified as Tax Map: # 021-20-008 and has an address of 167 Route 100.

Conclusions of Law: The proposed development lies in the **Commercial/Residential** District and will be reviewed under Article IV Section 450 E.

USES

Finding of Facts: Current use is a vacant commercial space. The proposed use is woodworking (a form of Manufacturing as defined in the Zoning Ordinance), office space, indoor storage, a woodworking shop, parking for 4, and a sign.

Conclusions of Law: In the Commercial/Residential District Office is a Permitted Use, Manufacturing and Parking are Conditional Uses. Commercial signs compliant with all requirements of the Zoning Ordinance are Permitted in all Districts. The Development Review Board will review the Manufacturing and Parking Conditional Uses under this application. The proposed sign will be reviewed by the Zoning Administrator as a Permitted Use.

DIMENSIONAL REQUIREMENTS

Findings of Fact: This use will take place within a pre-existing structure on a pre-existing lot. Not need to review dimensional requirements of this Use review.

Conclusions of Law: Not applicable

Article VII Standards

Section 710: Use Performance Standards

A. Vibration: No continuous, permanent, ongoing, or frequent vibration which is discernible at the property line.

Finding of Facts: The applicant testified that there will be no continuous permanent, ongoing, or frequent vibrations discernible at the property line. Woodworking will utilize power tools typical to woodworking such as power saws and sanders which do vibrate. However, all work will take place within the woodworking shop, with no vibration emanating outside of the structure.

Conclusions of Law: The Board concludes this use will not produce continuous, permanent, ongoing or frequent vibration discernible at the property line. The vibration standard is met.

B. Noise: Continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation must not exist at the property line. Recurring periodic noise in excess of that of a normal lawn mower at the property line is allowed provided it does not occur between the hours of 9PM and 7AM and does not significantly detract from or diminish other property's allowed use or land development.

Finding of Facts: The applicant testified that, at the property line, there will be no continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation. The only noise to be produced will be from power tools and a dust collection device, both of which will operate exclusively within the woodworking shop, which is well insulated with R19 insulation.

Conclusions of Law: The Board concludes there will be no noise in excess of a normal conversation discernible at the property line. The noise standard is met.

C. Air Emissions for Commercial Operations: There shall be no emission of dust, ash, smoke or other particulate matter which can:

1. Cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity.
2. Contaminate the property or beyond the property boundaries.
3. Have solid or liquid particulates in concentrations exceeding state standards.
4. Cause odorous matter in quantities as to be offensive.

Finding of Facts: The applicant and the applicant's partner Jim Stratner, testified that the woodworking operation will not produce ash, smoke, or particulate matter other than dust. The dust created in the woodworking process will be collected in a bin which is then taken to the dump. The applicant testified that air emitted from the building will be clean, not containing particulate matter that will cause damage, contaminate, exceed state standards, or cause odorous matter. The applicant testified that painting within the facility would be rare, and then only hand painting. There will be no spray painting within the facility.

Conclusions of Law: The board concludes that the Air Emissions standard has been met.

Article VII Standards

Section 721: General Standards

The proposed use shall protect against adverse effect on:

A: Community, Municipal or Educational Facilities

Findings of Fact: The applicant testified they have been working with Brian Johnson, Fire

Marshall on fire safety accommodations and will be receiving a Fire Safety Permit which will be provided to the Zoning Administrator upon receipt. Accommodations made to meet fire safety requirements include upgrade of all electrical to “explosion proof” outlets and the addition of an ADA accessible bathroom in the office. Fire Safety is being adequately addressed by the applicant. No burdens are anticipated to be placed on schools, police, health care facilities or other community services or facilities.

Conclusions of Law: The Board conditions this approval on receipt of a Fire Safety Permit prior to commencing Use of the structure for woodworking. The proposed development will not place an undue adverse effect on community, municipal, or educational facilities.

B: Traffic on Roads and Highways

Findings of Facts: The proposed development is accessed on the eastern side of Route 100 North. The lot has a broad ingress/egress parking lot from Route 100. While this traffic pattern is not ideal for controlling ingress/egress from route 100, it is a pre-existing situation with no authority to regulate under this decision. However, the owner and the applicant are taking steps voluntarily to manage ingress and egress to the center of the paved area for traffic safety. A pre-existing stone wall abutting route 100 at the northern end of the paved area (by 167 Route 100 N) will be maintained and a stone wall is being added to the southerly end of the paved area, constricting ingress and egress to a smaller area. Parking at 167 Route 100 N will be parallel to Route 100 with vehicles backing out of parking spaces into the common middle area of the parking lot. Keeping parked cars from entering from and backing out of parking spaces directly into the traffic lanes will ensure a safer traffic flow. This commercial operation is not expected to change traffic levels substantially as there will be a maximum of 4 people working at this location. There will be no retail sales, adding no customer traffic. In a rare case a customer may go to the office to review plans. This will be occasional and rare.

Conclusions of Law: The Board concludes that the proposed development will have minimal impact on traffic satisfying the standard requiring safe traffic, highways, and roadways. Steps have been taken by the owner and applicant to ensure that ingress and egress is improved and that parked traffic will not directly enter active traffic lanes from parking spaces. The Board finds that the traffic standard is met.

C: Bylaws and Ordinances in Effect

Finding of Facts: Proposed development has been shown to be conforming to all bylaws and ordinances in effect at the time of this decision including the Zoning Ordinance and the Town Plan.

Conclusions of Law: This Board concludes this application is in conformity with all bylaws and ordinances.

D. Utilization of Renewable Energy & Natural Resources

Development shall not have undue adverse impact on renewable energy and natural resources,

Findings of Fact: This commercial operation will utilize wood, a renewable resource.

Conclusions of Law: The board concludes this application is in conformity with having no undue adverse impact on utilization of renewable energy and natural resources.

E. Air Quality

Finding of Fact: See Section 710 A above

Conclusion of Law: The proposed use has been found to have no undue impact on air quality.

F. Character of the Area

Findings of Facts: The purpose of the Commercial/District is to encourage clustered economic development while preserving designated open spaces to prevent sprawl and strip development. The proposed use repurposes an existing commercial property that is vacant at this time. The Open space is largely maintained by the clustered development of this mixed use complex. In addition to this woodworking commercial operation, the Clock tower Building also houses an automotive services garage and residential units. This area also includes a bowling alley, a mini-golf facility, a convenience store and a restaurant.

Conclusions of Law: The Board concludes the proposed development is consistent with the defined purpose of the Commercial/Residential District and is consistent with the commercial character of the area.

Article VII Standards

Section 722: Conditional Use - Preserving the Character of the Town

A. Preserving the Town’s Character

B. Economic Development Contributing to the Character of the Town: Preserves the rural, agricultural character and ambiance of the community and historic downtown.

C. Development Consistent with the Rural, Agricultural, and Historic Nature of the Town: Merchandise and services shall not detract from the historic character and nature of the town as a family destination for tourists and a family focused residential community.

D. Formula Businesses – not applicable

E. Maximum Square Footage of Retail (2000 square feet) – not applicable

F. Building Scale Conformity – Not applicable

G. Utility Placement – Not applicable

Finding of Fact: Woodworking operations are consistent with the historic or rural/agricultural character of the town. The applicant’s partner testified that they have done a significant amount of work on historic preservations and works to retain the character of historic structures.

Conclusions of Law: The Board concludes the proposed use of woodworking preserves the character of the town consistent with the rural, agricultural, historic nature of the town as a family oriented tourist destination and a residential community. Their work on historic preservation projects furthers the goals of preservation and retaining the character of the town. The standard requiring the preservation of the character of the town is met.

Article VII Standards

Section 723: Conditional Use - Preserving the Character of the Town: Historic Preservation (required in the Historic Design Review District (HDRD), recommended in all other districts)

Findings of Fact: The proposed Use is not in the Historic Design Review District and is not to take place in a historic property. There are no historic characteristics of the structure to be preserved under this standard.

Conclusions of Law: Not applicable

Article VII Standards

Section 730: Conditional Use – Specific Standards

A. Lighting and Glare: Shall be shielded and downcast. Glare and reflection prohibited if it is an unreasonable nuisance to other property owners or tenants, does not contribute to aesthetics, scenic value or character of the area, or could impair vision of pedestrians or drivers. In HDRD and village must be consistent with historic character.

Findings of Fact: The applicant testified that they have removed the string lighting that was previously on the structure. They testified that they will be adding two (2) recessed down-lights on the eaves/trim of the structure and (2) wall sconces, described as gooseneck down-lighting to the sides of the doors. They testified these will not be directed toward traffic lanes and will not impede driver vision. Lighting will be operated by a switch and will not be left on overnight. It will only be on during open hours.

Conclusions of Law: The Board concludes the proposed downcast and shielded lighting meets this standard.

B. Safety: Shall minimize physical hazards where there are potential safety hazards.

Findings of Fact: No additional safety hazards were identified.

Conclusions of Law: Not applicable.

C. Traffic and Pedestrian Safety: Pedestrian walkways to ensure safe and efficient navigation by foot or bicycle. Special consideration shall be made for children's safety. Traffic patterns will be review for safety, ease of flow and efficiency.

Findings of Fact: This complex will not create pedestrian traffic on route 100. All pedestrian traffic will be within the clock-tower complex. Parking and building access clearly differentiates traffic areas from pedestrian areas. A stone wall between the parking area and Route 100 will serve to further enhance pedestrian safety. Parking and traffic patterns as described in Section 721 B will address pedestrian safety and ease of efficient traffic flow

Conclusions of Law: The Board concludes traffic and pedestrian safety have been adequately addressed in the proposed plan.

D. Road Development: New roads, public and private, shall conform to the town's Highway Ordinance.

Findings of Fact: The proposed use does not involve road development.

Conclusions of Law: Not applicable

E. Landscaping and Screening: Shall "preserve the rural and agricultural character and ambiance of the community". Natural features characteristic of the town's rural and agricultural in shall be used landscaping and Screening to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

a. Landscaping beds, trees, shrubs and plantings: required as needed to meet the stated goals above and shall be maintained in perpetuity for general aesthetic appearance and plant health.

b. Screening and Buffer Areas: required as needed to screen all unaesthetic features to meet the stated goals above. Screening must be of natural vegetation and plantings. Fencing may be used secondary to plantings to achieve screening. (See special provisions for screening unaesthetic

features, large and small.)

b1. Screening and Buffering Commercial Structures and Uses: Required when commercial development has an undue adverse aesthetic impact on surrounding properties and roads. Shall be minimum of 10 feet where reasonable and possible.

b2. Screening and Buffer of Parking: Required where reasonable and possible when parking has an undue adverse impact on the aesthetics of the properties and roads.

Findings of Fact: The applicant testified they will plant a mix of shrubs, flowers, and decorative plants in the buffer area between the highways and stonewall for improved aesthetics and that this area will be maintained for optimal aesthetics at all times. Plantings will not interfere with line of vision for traffic but will enhance the aesthetics of the rurally characteristic stone wall. This landscaping and buffer area to the parking lot will enhance the pre-existing heavily paved area.

Conclusions of Law: The Board concludes the Landscaping and Screening standards are met.

F. Land and Water Management: Protect properties, transportation systems, and public safety by safe and appropriate water management including water supply/availability, storm water retention/absorption, and impervious surface/runoff management.

b. prevent and control against water pollution

c. make provision for management of erosion, preservation of rivers & streams, river/stream bank management, wetland protection, waterway and channels management, and agricultural land protection,

Findings of Fact: The applicant testified that there is a gully between their property and the bowling alley that moves runoff from their property under the road and empties on the western side of Route 100. They do not have knowledge of where the parking area drains are located, but find there has never been a problem with runoff onto route 100. The applicant testified that the owners, Danny and John Lane will be handling all snow and ice removal.

Conclusions of Law: The Board concludes that the applicant's proposed use of pre-existing property that has not demonstrated issues with storm water run-off and drainage adequately meets this standard.

G. Wastewater and Potable Water: A permit may be issued upon receipt of evidence there is a wastewater and potable water permit. If none is received with a submitted application, the Permit will be conditioned on receipt of a wastewater and potable water permit at which time a final Permit will be issued. DRB shall instruct the applicant on their responsibility to obtain state and federal permits and may condition their decision on obtaining such permits.

Findings of Fact: The applicant testified that this property is on town water and sewer.

Conclusions of Law: Not applicable.

H. Natural Resources and Features: Existing vegetation, native species, native trees, scenic views, river access and other natural features shall be preserved to the extent possible and to the extent that they will enhance and promote the natural assets of the town. Clearing of land to create pastureland and scenic spaces/vistas is allowed provided it does not have an unreasonable impact on natural resources. Development shall blend with the topography, vegetation, and natural land features. It shall not have an undue adverse impact on natural features, natural resources or renewable energy. This includes no adverse impact on forested lands, streams and stream banks, steep slopes, wetlands, watersheds, floodplains, soil unsuitable for development, impervious surfaces essential to storm water detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural or manmade features, and renewable energy sources.

Findings of Fact: The proposed use has no impact on existing vegetation, native species, native trees, scenic views or other natural features.

Conclusions of Law: Not applicable.

I. Wildlife Protection: No adverse impact on wildlife habitats or corridors.

Findings of Fact: There will be no new development of structures.

Conclusions of Law: Not applicable

J. Shoreland Protection: Compliance with Shoreland Protection Act if development is within 250 feet of a body of water greater than 10 acres.

Findings of Fact: Proposed development is not near a body of water.

Conclusions of Law: Not applicable.

K. Flood Hazard Protection: Development must comply with the provisions of Article VI Flood Hazard District.

Section 602: Lands to which these regulations apply

A. These regulations apply for development in all areas of the Town of Wilmington identified as areas of special flood hazard in and on the most current flood insurance studies and maps published by the Dept. of Homeland Security (DHS), FEMA. National Flood Insurance Program, as provided by the Agency of Natural Resources pursuant to 10 VSA 753

B. The base flood elevations and floodway limits (zones A1-A30, AE and AH) provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer the provisions of these regulations.

Findings of Fact: See Exhibit 4, FEMA Flood Insurance Rate Map Panel 338 of 652, Rte. 100 N. Subject property is not within a special flood hazard area.

Conclusions of Law: Flood Hazard regulations are not applicable

L. Technical Review Costs: Applicant may be required to pay reasonable costs of technical review.

Findings of Fact: There are no technical review costs.

Conclusions of Law: Not applicable.

Section 732: Conditional Use – Other Specific Standards

- A. Affordable Housing
- B. Automotive Service Station and Repair Garage
- C. Junked Vehicles
- D. Medical Marijuana Dispensaries
- E. Mobil Home Parks (Trailer Parks)
- F. Commercial Parking and Unloading Areas
- G. Ponds/Water Impounds
- H. Quarry Operations
- I. Recreational Vehicle Storage
- J. Solar Projects
- K. Wind Turbines

Findings of Fact: The proposed development does not fall into any of the above categories with the exception of Commercial Parking and Loading Areas, provision F.

Conclusions of Law: Not applicable with the exception of F - Commercial Parking which is addressed below.

F. Commercial Parking and Loading: Commercial parking and loading areas in all districts shall:

- 1. Provide off-street parking** (except in the HDRD)
- 2. Parking spaces shall be 10 x 18** (smaller allowed only if need for added spaces outweighs the risk and public inconvenience of smaller spaces). Special consideration shall be given to safety, pedestrian and disabled persons concerns when smaller spaces are allowed.
- 3. Minimum number of spaces:** One (1) parking space for each employee.
- 4. Drive-up Windows:** no waiting lines in public ROW – not applicable
- 5. Minimize visual impact of parking/loading areas**
- 6. Buffer parking areas** if needed for safety or aesthetics
- 7. Public Road Access:** minimize traffic interruption, provide for auto and pedestrian safety
- 8. Rainwater, Snow, and Ice Removal/Storage:** Plan for snow/ice removal, runoff, safety.
- 9. Safety:** Minimize physical hazards, provide safe pedestrian and vehicular movement with unobscured views, especially visibility at intersections, pedestrian safety, convenience, emergency access.
- 10. Neighboring properties:** integrate circulation and parking with neighboring properties. Work to maximize for efficiency, safety, and attractive solutions.

Finding of Facts: The applicant testified there will be 4 parking spaces, one for each of the employees that may be present in the building at any time. There will be no retail sales or a need for retail parking. All parking spaces will be clearly marked and will be a minimum of 10' x 18'. See Sections 721 B and 730 (C) and (E) of this decision for additional information on parking traffic and pedestrian safety, traffic flow, minimizing the visual impact of parking, buffering parking areas, aesthetics, and snow/ice removal.

There is a pre-existing ADA accessible wooden ramp, where deliveries are received. This is an aesthetically appealing wooden structure. There is no need for additional screening of the delivery ramp/loading dock.

Conclusions of Law: The Board concludes commercial parking and loading standards have been met.

Article VIII Signs

Findings of Fact: The proposed development includes one sign which will be subject to the review and Permitting of the Zoning Administrator. The Clock tower multi-business center is allowed just one freestanding sign under current zoning unless the 2 pre-existing signs in this complex have been in continuous use and not lost their grandfathered status as a pre-existing legal non-conforming sign.

Conclusions of Law: Sign proposals will be reviewed by the Zoning Administrator.

CONDITIONS:

The application for development is **approved** with the following conditions, restrictions, requirements, limitations and specifications.

1. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits. 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.
2. There shall be a minimum of 4 parking spaces. All parking spaces shall be clearly marked and will be a minimum of 10 ft. x 18 ft.
3. Parking spaces shall be parallel to Route 100 traffic lanes, and will not allow parked vehicles to enter or exit directly into highway traffic. Parked vehicles must enter the highway through the central designated portion of the parking lot.
4. The applicant shall provide the Zoning Administrator with a copy of a valid Fire Safety Permit prior to conducting woodworking operations in this location.
5. Development and land use shall be managed so as to address any safety hazards.
6. The pre-existing stone wall abutting Route 100 shall be maintained and landscaping including shrubs, flowers, and decorative plantings shall be created and maintained in good condition in perpetuity. Plantings shall not impede traffic safety or line of sight.
7. All ADA conformity requirements set forth by the fire marshal or the state shall be complied with.
8. Pedestrian pathways will be planned and maintained in such a fashion as to provide for maximum pedestrian safety at all times including snow removal and ice management.
9. All outdoor public areas and sidewalks will be lit sufficiently to provide for public safety.
10. 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.
11. There shall be no significant air emissions of dust, ash, smoke or other particulate matter. Dust collection within the Woodworking shop shall be maintained and in good repair to effectively remove dust particulates so as to not be released into air emissions.
12. There shall be no permanent or ongoing vibrations created that can be perceived at the property line.
13. There shall be no ongoing or permanent noise created that, at the property line, is louder than a normal conversation.

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

If unused, this Approval expires two 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:

Deborah Dorsett
Tim Hall
Fred Houston
Wendy Manners Seaman
Peter Wallace

OPPOSED:

None

ABSTAINING:

None

For the Board: Wendy Manners Seaman, Chairperson

Date: December 1, 2016

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.