

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

A request for a permit was made to the Board by: **James and Patti Burke**

Owner/Applicant(s) Mailing Address: 393 Route 9 West, Wilmington, VT

Tax Map: # 05-01-021.000/05-01-31.600

A copy of the request is filed in the office of the Board and is referred to as: **#2017-060**

Description of Case per Public Notice:

Application is made for a Conditional use review to allow a wildlife refuge.

Notice for a public hearing was published in the Valley News on: **August 31, 2017**

Notice was posted in three public places on: **August 31, 2017**

A copy of the notice was mailed to the applicant on: **August 31, 2017**

A copy of the notice was mailed to the abutters on: **August 31, 2017**

A public hearing was held on September 18, 2017
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: November 25, 2017

Approval expires on: October 25, 2017

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

Interested parties present:

Ken Spicer - Executive Director Chimney Hill

EXHIBITS

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

1. Application
2. Plot Plan entitled "JIM'S WILD KINGDOM" dated Feb. 10 2017 designated "Preliminary" by Joyce Land Surveying Corp.

SYNOPSIS

The applicant proposes to continue the current primary use as a residential dwelling with a secondary use as a Wildlife Refuge with an area designated for future development of a residential dwelling which would be outside of the restriction for a wildlife reserve.

APPLICABLE DISTRICT

Findings of Fact: Subject property is identified as Tax Map: # 05-01-021.000/05-01-31.600 and has an address of 393 Route 9 West, Wilmington, VT

Conclusions of Law: The proposed development lies in the Residential and the Commercial/Residential Districts. Since the majority of the property lies within the Residential District, under Section 401, the application will be reviewed under the provisions of Article IV Section 450 C.

USES

Findings of Fact: The premise is presently being used as Residential and is in both the residential and Commercial/Residential Districts. The proposed use of Wildlife Refuge is a Conditional Use in the Residential District in which the majority of the property lies.

Conclusions of Law: The application will be reviewed under the applicable provisions of Article VII.

DIMENSIONAL REQUIREMENTS

Findings of Fact: The structure pre-exists and will not be modified

Conclusions of Law: Not applicable.

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: Testimony was received from the Zoning Officer that the premises are not situated within the flood hazard district

Conclusions of Law: Not applicable

ARTICLE VII STANDARDS

Section 710: Use Performance Standards

Pursuant to 24 V.S.A. § 4414(5) Performance Standards, the following standards shall apply to all uses and land development in the town.

A. Vibration: No permanent, ongoing vibration shall be produced which, when transmitted, is discernible at the property line without the aid of instruments.
Temporary vibration created during land development should be limited to daylight hours to preserve quality of life in neighboring properties.

Findings of Fact: Testimony was received from Mr. Burke that no vibrations emanate from the premises.

Conclusions of Law: This condition is satisfied.

B. Noise: continuous, permanent or ongoing noise in excess of that of a normal conversation (in the judgement of the Development Review Board) must not exist at the property boundary line.
Recurring periodic or intermittent noises in excess of that of a normal lawn mower (in the judgement of the Development Review Board) at the property line is allowed provided it does not occur between the hours of nine (9) PM and seven (7) AM, and does not significantly detract from or diminish other property's allowed use or land development.

Findings of Fact: Testimony was received from Mr. Burke that no continuous, permanent or ongoing noise in excess of that of a normal conversation will exist at the property boundary line.

Conclusions of Law: This condition is satisfied.

C. 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 to be offensive.

Findings of Fact: Testimony was received from Mr. Burke that there was no commercial operation and as such, no such emissions exist on the premises.

Conclusions of Law: This condition is satisfied.

D. Injurious or Noxious Practices: No operations or use shall create electromagnetic, liquid or solid refuse or waste, heat, cold, dampness, explosive, fire, glare, or other hazard which may cause injury or damage to human or animal health, vegetation, or property.

Findings of Fact: Testimony was received from Mr. Burke that no such operations or use exist on the premises.

Conclusions of Law: This condition is satisfied.

Section 721: Conditional Use – General Standards

In all districts, all Conditional Use development shall protect from undue adverse effects. No Land Development or use shall result in an undue adverse effect on any of the following:

A. The capacity of existing or planned community, municipal or educational facilities;

Findings of Fact: Testimony was received from Mr. Burke that no land development or no undue adverse effects exist that would impact the capacity of existing or planned community, municipal or educational facilities.

Conclusions of Law: This condition is satisfied.

B. Impact on traffic, roads, highways, transportation systems, pedestrian walkways in the vicinity.

Findings of Fact: Testimony was received from Mr. Burke that no land development or no undue adverse effects exist that would impact traffic, roads, highways, transportation systems, pedestrian walkways in the vicinity;

Conclusions of Law: This condition is satisfied.

C. By-laws and ordinances in effect at the time;

Findings of Fact: Testimony was received from Mr. Burke that no land development or no undue adverse effects exist that would impact By-laws and ordinances in effect at the time.

Conclusions of Law: This condition is satisfied.

D. Utilization of renewable energy resources;

Findings of Fact: Testimony was received from Mr. Burke that no land development or no undue adverse effects exist that would impact the utilization of renewable energy resources.

Conclusions of Law: This condition is satisfied.

E. Air quality

Findings of Fact: Testimony was received from Mr. Burke that no land development or no undue adverse effects exist that would impact air quality.

Conclusions of Law: This condition is satisfied.

F. The character, aesthetics, and scenic value of the neighborhood and area affected, as defined by the purpose or purposes of the zoning district within which the project is located and specifically stated policies and standards of this ordinance and the Town Plan.

Findings of Fact: Testimony was received from Mr. Burke that the character, aesthetics, and scenic value of the neighborhood in the area affected by the application were being maintained.

Conclusions of Law: This condition is satisfied.

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

Land development and uses in all Districts shall preserve the character of the town consistent with its rural and agricultural heritage, conforming to the following:

A. Preservation of the Town’s Character: Business development shall, to the extent reasonable

and possible, occur in a manner that preserves the rural and agricultural character and ambiance of the community and the historic downtown.

Findings of Fact: Testimony was received from Mr. Burke that this application is not for any business development but for change of use to a wildlife reserve.

Conclusions of Law: Not applicable

B. Economic Development Contributing to the Character of the Town: Merchandise or 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.

Findings of Fact: Testimony was received from Mr. Burke that this application is not for any economic development but for change of use to a wildlife reserve.

Conclusions of Law: Not applicable

C. Development Consistent with the Rural, Agricultural and Historic Nature of the Town:

Construction, reconstruction, or land development, whether allowed, permitted or conditional shall, to the extent possible, reflect and/or compliment the historic nature of the town and the rural and agricultural appearance of the neighborhood and region.

Findings of Fact: Testimony was received from Mr. Burke that the application did not involve any construction, reconstruction or land development.

Conclusions of Law: Not applicable

D. Formula Businesses: The visual appearance of Formula Businesses (see Article X for a complete definition), including signage, shall project an appearance harmonious with the character of the rural, agricultural and historic nature of the town, reflection the distinctive and unique character of the town, consistent with the Site Plan and Design Guidelines of Appendix I.

Findings of Fact: The project is not a “Formula Business”

Conclusions of Law: Not applicable

E. Maximum Square Footage for Retail: Retail stores exceeding two thousand (2000) square feet may be approved by the Development Review Board in the event that the business:

1. is consistent with the character and ambiance of the community
2. is found to be in the best interest of the community
3. is the minimum size required to reasonably accommodate the business
4. will enhance or preserve the economic base and economic diversity of the town as a whole
5. will create economic stability and viability for the community.

Findings of Fact: The proposal does not relate to a retail business.

Conclusions of Law: Not applicable

F. Building Scale Conformity: Development shall conform to the scale of the established neighborhood.

Findings of Fact: This application does not involve a development.

Conclusions of Law: Not applicable.

G. Utility Placement: to preserve the aesthetics and natural beauty of the area, underground utilities are encouraged where possible, particularly in areas of natural scenic beauty and in the Historic Design Review District.

Findings of Fact: This application does not involve the use of utilities.

Conclusions of Law: Not applicable.

Section 730: Conditional Use – Specific Standards

All land development and uses in all Districts and Overlay Districts shall conform to the following:

A. Lighting and Glare: Lighting in the Historic Design Review District and Village District shall be in keeping with the historic character of the commercial area of the village. All exterior lighting in all districts shall be shielded and downcast. Interior and exterior lighting, glare or reflection are prohibited if they:

1. Constitute an unreasonable nuisance
2. Are found not to contribute to the aesthetics, scenic value or character of the area and community
3. Found impair the vision of pedestrians or the driver of a motor vehicle or an aircraft..

Findings of Fact: Testimony was received that there will be no lighting.

Conclusions of Law: Not applicable

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

Findings of Fact: Testimony was received from Mr Burke that there are no physical hazards.

Conclusions of Law: This condition is satisfied.

C. Traffic and Pedestrian Safety: Development shall provide for 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 traffic flow and efficiency.

Findings of Fact: Testimony was received from Mr Burke that the application does not involve any development and in any event the property is not open to the public.

Conclusions of Law: Not applicable.

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

Findings of Fact: No new roads are proposed.

Conclusions of Law: Not applicable.

E. Landscaping, Screening and Buffer Areas: As defined in Section 722(A) development shall “preserve the rural and agricultural character and ambiance of the community”. Natural features characteristic of the town’s rural and agricultural character shall be used in Landscaping and Screening to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

Findings of Fact: The application does not involve any development.

Conclusions of Law: Not applicable.

F. Land and Water Management: Pursuant to 24 V.S.A. Section 4414(1)(G) and 24 V,S.A. Section 4414(9) the development plan shall protect properties, transportation systems and public safety by:

- a. Providing for safe and appropriate water management including but not limited to water supply quality/availability, storm water retention/absorption, and impervious surface runoff management.

- b. Preventing and controlling against water pollution
- c. Making appropriate provision for management of erosion, preservation of rivers & streams, river/stream banks wetlands, waterways, channels, and agricultural lands.
- d. Preserving and promoting scenic or aesthetic features and open spaces

Findings of Fact: Testimony was received from Mr. Burke that there was to be no land development.

Conclusions of Law: Not applicable

G. Wastewater and Potable Water: Pursuant to 24 V.S.A. Section 4414 (13), the Zoning Administrator may issue an initial Permit conditioned upon receipt of evidence of a wastewater and potable water supply Permit, if none is provided with the submitted application. A final Permit may be issued by the Zoning Administrator after receiving evidence that a Permit has been issued, as applicable, under chapter 64 Title 10. Development Review Board decisions shall instruct the applicant of their responsibility in obtaining state and federal Permits and may condition their decision on obtaining such a Permit if none has been obtained.

Findings of Fact: No waste or potable water impacts

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: Testimony was received from Mr. Burke that this application is to create a wildlife reserve that would offer refuge to flora and fauna of the area.

Conclusions of Law: This condition is satisfied.

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

Findings of Fact: Testimony was received from Mr. Burke that this application is to create a wildlife reserve on lands shown on Exhibit 2 that would offer refuge to flora and fauna of the area. The proposed use would have a positive impact on wildlife habitats and corridors.

Conclusions of Law: This condition is satisfied.

J. Shoreland Protection: Pursuant to 24 V.S.A. Section 441 (13) all development shall be in conformity with the Shoreland Protection Act (applying to all development within 250 feet of a body of water greater than or equal to 10 acres)

Findings of Fact: The premises are not “shoreline” as defined in 24 V.S.A Section 4414.

Conclusions of Law: Not applicable.

K. Flood Hazard Protection: Development must comply with the provisions of Article VI Flood Hazard District, if applicable. All floatables in any district and in an area which has historically flooded and all Flood Fringe Areas, shall be raised above the estimated Base Flood Elevation (BFE)

or firmly secured so as to ensure they are not dislodged in the event of a flood. This includes but is not limited to propane, oil, and gas tanks, chemicals, explosives, flammable liquids, toxic or hazardous materials. (See Flood Hazard Regulations Section 620 (B) (12)). While hay bales and logs are protected Agricultural and Silviculture industries in Vermont, conformity with this provision is encouraged.

Findings of Fact: Testimony was received from the town’s zoning officer that the property is not within the Flood Hazard District.

Conclusions of Law: Not applicable.

L. Technical Review Costs: DRB may require applicant pay reasonable technical review costs.

Findings of Fact: No technical review is required.

Conclusions of Law: This condition is satisfied.

Section 732: Conditional Use – Other Specific Standards

Findings of Fact: Proposed Use does not fall within any Specific Standards

Conclusions of Law: Not applicable.

The application for approval of a conditional use as a wildlife refuge is **approved** with the following conditions, restrictions, requirements, limitations and specifications:

CONDITIONS:

1. Since the establishment of a Wildlife Refuge requires, by definition, that the development rights of the property have to be transferred to an independent party, this approval is conditional upon such a transfer being affected. A deed restriction does not constitute a transfer of development rights as required in the definition of a Wildlife Refuge..
2. This approval is further conditioned upon the applicant filing with the Zoning Administrator a final plot plan showing the lands subject to the transfer of development rights.

This approval is conditioned as stated above. This approval does not create a Wildlife Refuge as defined by state or federal requirements.

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

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:

Paul Lockyear
Fred Houston
Wendy Manners Seaman

OPPOSED:

None

ABSTAINING:

None

For the Board: Wendy Manners Seaman, Chairperson Date: _____

Copies of this decision have been mailed to: _____

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.