

**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: **Electric Icehouse, LLC**  
Owner/Applicant(s) Mailing Address: **70-09 73<sup>rd</sup> Place, Glendale, NY 11385**  
Address of the subject property: **6 North Main Street, Wilmington, VT, 05363**  
Tax Map: # **02- 20-034.000**  
Application # **2017-081**

A copy of the request is filed in the office of the Board.

**Description of Case per Public Notice:**

Owner, Electric Icehouse, LLC. Agent: Brattleboro Savings & Loan (Daniel C. Yates).  
Application is being made for a Conditional Use review to allow a Bank (Temporary bank branch). Village Zoning District inside the Historic Design Review Zoning District, Sections 450 (B) 4, 710, 721, 722 & 723. Location: 6 North Main Street.

Summary. The bank proposes operating on a temporary basis at 6 North Main St. They are leasing this structure on a month to month basis. The bank hopes to be out of this temporary facility and into their new facility at 108 East Main St by next June. The bank will not alter the existing structure, except for any needed maintenance or repairs. The inside will have room dividers and furniture as well as a vault kept in a room protected by a metal door. Data lines and a security system are being installed. While the bank will be adding signage, that will be handled under separate application to the Zoning Administrator. (Applicant testimony)

Notice for a public hearing was published in the Valley News on: **November 30 , 2017**

Notice was posted in three public places on: **November 30, 2017**

A copy of the notice was mailed to the applicant on: **December 1, 2017**

A copy of the notice was mailed to the abutters on: **December 1, 2017**

There was no Site Visit.

A public hearing was held on **December 18, 2017**

The following presented testimony as agent on behalf of the Applicant:

- **Dan Yates, President Brattleboro Savings Bank**

In addition to the Applicant/Agents the following persons, heard by the Board in connection with this request were determined to be "Interested Persons". The decision of the Board on this application may be appealed by anyone identified as an Interested Person, pursuant to Vermont Statutes Annotated. Appeal shall be made to the Vermont Environmental Court. Copies of this decision have been mailed to those persons listed below.

- Interested Persons: **None**

**Appeal period for this Case expires on: February 2 , 2018**

**Approval Expires on: January 2, 2020**

In addition to the above Interested Persons, the following attended the hearing, providing no testimony.

- Other Persons: None

### **Exhibits**

The following Exhibits were placed by the Applicant:

1. Application
2. Decision 2012-027 for 6 Main St. made for applicant Electric Lighthouse, LLC

### **Applicable District**

**Finding of Facts:** Subject property is identified as Parcel ID# 02-20-034.000

**Conclusions of Law:** The proposed land development is in the Historic Design Review District of the Village District.

### **Uses - Section 450 B (5b)**

**Finding of Facts:** Most current Use was Retail Business. Intended Use under this application is a Bank.

**Conclusions of Law:** Bank is a ‘Conditional Use’ in the Historic Design Review District. As a Conditional Use the planned Land Development is subject to Development Review Board review and approval (Section 222A).

### **Dimensional Requirements**

The dimensional requirements of Section 450 B 5a, the Historic Design Review District of the Village District are:

Max Lot Coverage: unlimited

Structures/Uses per Lot: Unlimited

Min Lot Size: 1/8 acre

Min Lot Frontage: 40 feet

Min Lot Depth: not apply

Height Maximum: 35 feet to eave line from average grade (over 24 feet requires DRB review)

Front Setback: 0 feet

Side & Rear Setback: 0 feet

**Finding of Facts:** This application is for a Change of Use only.

**Conclusions of Law:** There are no Dimensional Requirements applicable to this application.

### **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 and the 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.

**Finding of Facts:** Flood Hazard were reviewed under DRB decision 2012-027 and was found to “conform to the requirements of the Wilmington Zoning Ordinance.

**Conclusions of Law:** Flood Hazard Regulations found to comply under decision 2012-027.

**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.

**Finding of Facts:** The proposed Use of this property will create no permanent or ongoing vibration. (Applicant testimony).

**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.

**Finding of Facts:** The proposed Use of this property will create no continuous, permanent or ongoing noise. (Applicant testimony)

**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.

**Finding of Facts:** The proposed Use of this property will not create emission of dust, ash, smoke or other particulate matter. (Applicant testimony)

**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.

**Finding of Facts:** The proposed Use of this property will create no 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. (Applicant testimony)

**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;

**Finding of Facts:** It is anticipated that 3-4 persons will be employed at the premises. These individuals will come from the local communities. Employee volume is not expected to have an undue adverse impact on local community, municipal or educational facilities. An alarm system is to be installed to notify appropriate parties of intrusion or fire (applicant testimony). The Zoning Administrator met with a representative of the Fire Department. No issues of concern were identified. (Zoning Administrator testimony) Once the vault is installed the applicant will meet with the local police force to familiarize the local police staff with new facilities, review police services provided and address any police protection concerns.

**Conclusions of Law:** Proposed development will have a positive and contributory impact on the community. There will be no undue impact on municipal or educational facilities. The decision will be conditioned on a bank representative meeting with the police once the vault is installed to familiarize the local police staff with new facilities, review police services provided and address any police protection concerns.

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

**Finding of Facts:** The property is located in the downtown area, two buildings north of the route 9/100 intersection and traffic light. Anticipated pedestrian customer volume is 75 persons per day. The applicant has reached agreement with Jerry Oshler of the Red Mill to utilize on-site parking, primarily for employee parking. Municipal parking is available in several locations in town within a short walking distance, all interconnected through state & municipally maintained sidewalks and crosswalks. Bank parking in the downtown Municipal Lot will require crossing the busy downtown intersection.

**Conclusions of Law:** The state highways 100 and 9 are able to handle anticipated travel volume. Processes are in place for safe movement of pedestrians. The applicant agrees to review the expected pedestrian traffic through the main downtown intersection to identify and address any pedestrian safety issues.

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

**Finding of Facts:** There is no anticipated impact on other town ordinances.

**Conclusions of Law:** Not applicable

D. Utilization of renewable energy resources;

**Finding of Facts:** The bank has purchases solar power through the Brattleboro Solar Array. They will investigate whether this temporary location can be served through that arrangement (applicant testimony).

**Conclusions of Law:** The proposed development will maximize potential use of renewable energy resources. This condition is satisfied

E. Air quality – See Findings and Conclusions in Section 710 C above

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.

**Finding of Facts:** The presence of a bank in the downtown will promote downtown development and convenience for residents and visitors. It preserves and promotes the character and aesthetics of the downtown. The business will be open: 8 am – 5 pm M-F (lobby 9 am), 9 am – 12 pm Saturday. Closed Sunday.

**Conclusions of Law:** The 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.

**Finding of Facts:** Banking is compatible with the mixed use goals of the District and a positive contributor to the range of services available for residents and visitors in the compact downtown.

**Conclusions of Law:** This standard is met.

**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.

**Finding of Facts:** Banking is an age old and historic service that will contribute to the historic value of the town for resident families and tourists alike.

**Conclusions of Law:** This condition is satisfied.

### **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.

**Finding of Facts:** No construction, reconstruction, or land development is proposed.

**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, reflecting the distinctive and unique character of the town, consistent with the Site Plan and Design Guidelines of Appendix I.

**Finding of Facts:** 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.

**Finding of Facts:** The business is not retail.

**Conclusions of Law:** Not applicable

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

**Finding of Facts:** No exterior structural changes are proposed.

**Conclusions of Law:** This standard is 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.

**Finding of Facts:** No Land Development is proposed

**Conclusions of Law:** This standard is satisfied.

**Section 723 Conditional Use – Preserving the Character of the Town: Historic Preservation**

Compliance with the following guidelines is required in the Historic Design Review District (a Design Review District) to the extent reasonable and possible to preserve, rehabilitate, or restore historic Structures”

**Finding of Facts:** 6 Main Street is an existing Historic Structure, listed on the National and State Registers of Historic Places. While no structural changes are anticipated, the exterior of the structure will be painted and/or repaired as needed to ensure it contributes positively to the neighborhood and region. This includes, but is not limited to, repair to lighting fixtures on the front of the structure. (Applicant testimony)

**Conclusions of Law:** The exterior of the structure will be painted and/or repaired as needed to ensure it contributes positively to the neighborhood and region. This includes repair to lighting fixtures on the front of the structure. This standard is met.

**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:** 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. Are found to impair the vision of pedestrians or the driver of a motor vehicle or an aircraft.

**Finding of Facts:** Existing exterior lighting is downcast and shielded, but is broken and in disrepair. The bank agrees to repair exterior lighting. All exterior lighting will be shielded and downcast. Interior and exterior lighting shall not produce undue glare, create an unreasonable nuisance, and negatively impact the scenic value or aesthetics of the downtown. (Applicant testimony)

**Conclusions of Law:** This standard is met.

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

**Finding of Facts:** All OSHA requirements shall be met. The Zoning Administrator has met with

the Wilmington Fire Department and has been found to present no safety issues. The applicant will meet with Wilmington Police Department to ensure there are no safety concerns. The Bank is compliant with all federal banking regulations and safety requirements. (Applicant testimony)

**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 reviewed for safety, ease of traffic flow and efficiency.

**Finding of Facts:** See Section 721 B above.

**Conclusions of Law:** Vehicular and pedestrian movement and safety has been adequately addressed. This standard is met.

**D. Commercial Parking and Loading Areas:** Pursuant to 24 V.S.A. Section 4414 (4) All commercial parking and loading areas in all districts in the town shall adhere to the following standards:

1. Parking Spaces Required: With the exception of the Historic Design Review District, for every building hereafter changed in Use, erected, altered or extended in such a way as to likely increase the need for parking, there shall be off-street parking spaces....:

**Finding of Facts:** Proposed development is in the Historic Design Review District which does not require on-site parking. However, an armored car will arrive once every other week and park as close to the bank as possible. They will use existing parking spaces if available or park in the Red Mill lot through the agreement between the bank and Jerry Oshler of the Red Mill,

**Conclusions of Law:** Designated parking is not applicable to businesses in this District.

7. Public Road Access: Traffic circulation shall provide for automotive and pedestrian safety.

**Finding of Facts** See Section 721 B

**Conclusions of Law:** This condition is not applicable.

8. Rainwater, Snow and Ice Removal/Storage:

**Finding of Facts:** Snow will be plowed by the State (Applicant testimony). The bank has contracted with a local service to ensure walkways will be shoveled and sanded/salted as needed to ensure customer and employee safety.

**Conclusions of Law:** This condition is satisfied.

9. Safety:

**Finding of Facts:** See Section 721 A and B.

**Conclusions of Law:** This condition is satisfied.

10. Neighboring Properties:

**Finding of Facts:** There are no parking or roadway issues relevant to neighboring properties, with the exception as noted in Section 730 D (1) above.

**Conclusions of Law:** This condition is satisfied.

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

**Finding of Facts:** No new roads are proposed.

**Conclusions of Law:** This standard is not applicable.

**F. 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.

- a. Landscaping beds, trees, shrubs and plantings shall be required as reasonable and possible to protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties, creating green spaces where possible and shall be maintained for aesthetics and plant health. Plants that do not survive shall be replaced within the growing season.
- b. Screening and buffer areas shall maximize aesthetics. Natural features and vistas shall be protected. All screening shall include natural vegetation, plantings, hedges, and/or rock formations. Fences and walls may be used as a supplement to natural vegetation screening as needed to achieve a visual barrier.

Unaesthetic features creating undue adverse impact shall be screened. Where there is undue impact on the aesthetics on residential properties, neighborhoods, public areas, or highways and roads, a buffer area shall be provided, to a minimum depth of 10 feet where reasonable and possible.

Parking having an undue adverse impact on residential properties, neighborhoods, public areas, or highways/roads, screening shall be provided where reasonable and possible.

**Finding of Facts:** No external Land Development is planned.

**Conclusions of Law:** This standard is not applicable.

**G. 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

**Finding of Facts:** No land development is planned.

**Conclusions of Law:** This standard is met.

**H. 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.

**Finding of Facts:** This property is on the town water/sewer system and will continue to do so. Water/sewer allocations have been made for the proposed development.

**Conclusions of Law:** This condition is met.

**I. 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, pervious surfaces essential to storm water detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural or manmade features, and renewable energy sources.

**Finding of Facts:** There is no planned Land Development

**Conclusions of Law:** This condition is satisfied.

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

**Finding of Facts:** There is no planned Land Development. The property is in a dense commercial area. There are no wildlife corridors or habitats.

**Conclusions of Law:** This condition is satisfied.

**K. 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)

**Finding of Facts:** The premises are not “shoreline” as defined in 24 V.S.A Section 4414.

**Conclusions of Law:** Not applicable.

**L. 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.

**Finding of Facts:** See Section 602 above.

**Conclusions of Law:** This condition is met.

**M. Energy Resources:** Commercial Development shall comply with Commercial Building Energy Standards. Residential Development shall comply with Vermont Residential Building Energy Standards.

**Finding of Facts:** No Structural development is planned,

**Conclusions of Law:** This standard is not applicable

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

**Finding of Facts:** No technical review is required.

**Conclusions of Law:** This condition is satisfied.

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

## Conditions

1. The bank agrees to meet with the police once the vault is installed to familiarize the local police with the facilities, review police services provided and address any police protection concerns.

2. The bank agrees to review with police expected pedestrian traffic volume through the main downtown intersection to identify and address any pedestrian safety issues.
3. The exterior of the structure will be maintained and/or repaired as needed to ensure it contributes positively to the neighborhood and region.
4. Exterior lighting will be shielded and downcast. Existing lighting fixtures will be repaired and maintained in good repair. Any additional lighting, including internal lighting, shall not produce undue glare, create an unreasonable nuisance, or negatively impact the scenic or aesthetics of the downtown.
5. All materials stored within the Base Flood Elevation (BFE) shall be secured so as to ensure that they are not dislodged in the event of a flood.
6. Hours of Operation will be 8 am – 5 pm M-F (lobby 9 am), 9 am – 12 pm Saturday. Closed Sunday.

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:

Fred Houston  
 Wendy Manners Seaman  
 Peter Wallace

OPPOSED:

None

ABSTAINING:

None

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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.*