

**TOWN OF WILMINGTON  
DEVELOPMENT REVIEW BOARD  
FINDINGS OF FACT AND STATEMENT OF FINDINGS  
TIME EXTENSION REQUEST SEPTEMBER 2018  
WILMINGTON, VERMONT 05363**

A request for a 2 year Time Extension was made to the Board by: **Hermitage Inn Real Estate Holding Company LLC [HIREHC]**

Owner/Applicant(s) Mailing Address: **PO Box 2210, West Dover, VT 05363**

Address of the subject property: **10 Gatehouse Trail & 177 Fannie Hill Rd, Wilmington, VT 05363**

Tax Map: **#HAYSTACK.SKI**

Application # **2018-064**

Exhibit: September 28, 2018 Memo to Craig Ohlson from James Barnes, owner of HIREHC naming Harper Sibley as an assigned agent.

**Description of Case per Public Notice:**

Owner: Hermitage Inn Real Estate Holding Company, LLC. Agent: Robert Rubin & Robert Fisher. Application is being made for a second extension of time for Development Review Board Case #2015-045. The property is in the Resort-Commercial/Residential zoning district.

Notice for a public hearing was published in the Valley News on: **September 13, 2018**

Notice was posted in three public places on: **September 13, 2018**

A copy of the notice was mailed to the applicant on: **September 13, 2018**

A copy of the notice was mailed to the abutters on: **September 13, 2018**

The request for Time Extension was considered at a public hearing held on: **October 1, 2018**

Decision 2015-045 expired on: **September 2, 2018**

Application for Extension of Time was received on: **August 14, 2018**

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

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

- **Harper Sibley, President HIREHC**

Interested Parties presenting testimony at the hearing included:

- **Scott Moore, Chief of Wilmington, VT Fire Department**

There were no other interested parties or others presenting testimony at the hearing.

Present at the hearing were the following members of the Development Review Board

Wendy Manners Seaman – Case manager

Fred Houston

Jessica Couture

Peter Wallace

[Paul Lockyear recused himself from this hearing]

## RELEVANT ZONING LANGUAGE

### Section 222:

“The Development Review Board shall perform review functions, including but not limited to review of and making quasi-judicial decisions on the following: K. Extensions: Grant extensions to prior Development Review Board Decision(s) and approval of Land Development or Use.”

### FINDINGS

Harper Sibley testified that HIREHC remains owned by James Barnes. When questioned as to the role of the bank assigned receiver of the property, He indicated that while the receiver has control over some aspects the property, James Barnes remains the legal owner. There has been no change of title ownership.

Harper Sibley testified that:

- 1) Hotel development approved in decision 2015-045 and with a 1 year extension expiring September 2, 2018 was delayed due to financial difficulties occurring over the past year or more.
- 2) A hotel is vital to the economic viability of the private club by providing 4 season income in the form of weddings, conventions, and other hotel activities. He noted that all other major ski areas have a hotel as an economic resource providing income stability for seasonal ski areas.
- 3) The current plan is to build the hotel exactly as presented in the hearings July 6<sup>th</sup> and July 20<sup>th</sup> 2015 in regards to application 2015-045.
- 4) HIREHC has taken no action toward developing the 2015 approved hotel or toward meeting the Conditions of development as stated in decision 2015-045.
- 5) No state Act 250 application has been prepared or submitted for hotel development.
- 6) HIREHC plans to open the ski area by Christmas 2018 and to file for Act 250 approval in January 2019.

Upon questioning Harper Sibley stated that he has not read decision 2015-045 or the extension decision issued March 15, 2018.

Scott Moore, Wilmington Fire Chief testified that:

Neither he nor anyone else currently in the Fire Department has a copy of any agreement previously negotiated with the fire department through the prior Fire Chief; that he is not aware of what provisions were discussed under that proposed arrangement, and that, to the best of his knowledge, the prior Fire Chief had not signed any proposed agreement. He requested the right to negotiate a new agreement with HIREHC.

## **DECISION**

**The Board would like to first express to the applicant our unwavering support for the successful use of Haystack Mountain, consistent with the Town Plan and Zoning Ordinance, as a recreational resource and economic benefit for the town, for our residents and for HIREHC members.**

### **The Board concludes:**

- The time limited duration of all Zoning Permits issued in the town of Wilmington ensures that development not substantially completed within a specified period of time comes to the Zoning Administrator and/or Development Review Board for re-review under current zoning requirements.
- The applicant has not substantially completed proposed development within the timeframe specified in the Zoning Permit.
- Since the granting of a Permit under decision 2015-045 in September 2015 there has been substantial change to the Zoning Ordinance impacting current development in the town of Wilmington.
- In consideration of changes that had occurred in the Zoning Ordinance since the original decision “including but not limited to changes in Height Maximums and Waiver Provisions”, on September 2, 2017 the applicant was granted a Time Extension for one-half the requested two (2) year extension duration. A Time Extension was granted for one (1) year.
- It is unprecedented to grant sequential extensions in the town of Wilmington. To do so would create a precedent of prolonged development times without re-review of projects that are not moving successfully toward substantial completion within approved timeframes.
- An Act 250 filing is yet to be started and approvals are to still be obtained. As such, significant time will elapse before hotel development could feasibly commence, making it unreasonable to expect hotel development to be completed within the requested 2 year Time Extension.
- There has been no hotel development effort by the current HIREHC management team. Harper Sibley, President testified that he has not read decision 2015-045 nor has action been taken by the HIREHC organization in support of hotel development.
- The Fire Department requests the opportunity to reconsider fire protection arrangements.

In summary: Since the granting of a one (1) year extension on September 2, 2017 the applicant has not started planning for or substantially completed any development on the proposed hotel. The assigned agent for this application is not familiar with decision 2015-045. Significant time has elapsed since the original decision, with significant changes at HIREHC as well as in the zoning ordinance. It is consistent with Wilmington zoning regulations and practices that development not substantially completed in a timely fashion be subject to re-review. In addition, Wilmington Fire Department has requested an opportunity to reconsider the fire protection arrangements for the hotel.

**In due consideration of the Facts presented, the Board DENIES a Time Extension.**

**In favor or grant an extension:**

None

**In favor of denying another Time Extension:**

Jessie Couture

Fred Houston

Wendy Manners Seaman

Peter Wallace

**The Wilmington Development Review Board welcomes reapplication for a hotel under current zoning regulations. We wish the best for the success of HIREHC; for the town, for our residents, and for HIREHC members.**

Dated October 18, 2018

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Wendy Manners Seaman – Chair

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the [planning commission/zoning board of adjustment/development review board]. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.