

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: **Lorista Holdings, LLC**

Owner/Applicant(s) Mailing Address: **101 North Plains Industrial Road, Wallingford, CT 06492**

Agent Mailing Address: **Paul Lockyear, 153 W. St, Wilmington, VT 05363**

Address of the subject property: **15 West Main Street**

Tax Map: **#020-20-071**

A copy of the request is filed in the office of the Board and is referred to as: **Application #2018-054**

Date of Application: **August 28, 2018**

Zoning Ordinance Then in Effect: Adopted October 9, 2017

Description of Case per Public Notice:

Application #2018-054:Owner: LH Vt. House LLC. Agent: Paul Lockyear, Application is being made for a Conditional Use Review to allow a Beer & Wine Bar in an existing Inn. Village zoning district (Historic Review District). Sections 450 B 4, 710, 721, 722, 723 and 730. Location: 15 West Main Street

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 10, 2018**

A copy of the notice was mailed to the abutters on: **September 10, 2018**

Public hearing was held on: **September 17, 2018**

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 18, 2018

Approval expires on: October 18, 2020

In addition to the Applicant's agent, Paul Lockyear, the following persons heard by the Board in connection with this request, were determined by the Board to be "interested persons": None

Copies of this decision have been mailed to those persons listed below. No additional persons.

EXHIBITS

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

1. Application consisting of 4 pages
2. Plan of the interior showing the proposed Beer and Wine Bar
3. Letter from Liliias MacBean Hart dated 14 Sept. 2018 supporting the application.

SYNOPSIS

The applicant proposes to modify a portion of the first floor of the Vermont House for a beer and wine bar to include a cold room for storage. (See Exhibit 2)

APPLICABLE DISTRICT

Finding of Fact: Subject property is identified as Tax Map: 29-20-071 and has an address of 15 West Main Street (hereinafter “Vermont House”)

Conclusions of Law: The proposed development is located in the **Village District** within the **Historic Design Review District** and in the **Flood Hazard District**. The application will be reviewed under Section 450(B) (4) as a Conditional Use, so much of Section 530 as may apply, so much of Article VI as may apply and so much of Article VII as may apply.

USES

Finding of Facts: In the past this structure has been a hotel with a 62 seat restaurant and 11 guest rooms. The Vermont House is presently permitted for 10 guest rooms and an inn keeper’s apartment under the terms of a DRB permit in Case # 2014-031 dated May 16, 2014, hereinafter “the Prior Case”. The proposed Use is as a “Bar or Lounge” which would be a Secondary Use to this property. The Current Use of the property is “Lodging – more than 2 guest rooms”, as defined, or “Inn” pursuant to the DRB’s decision in the Prior Case”. (Application and Testimony of Craig Ohlson.)

Conclusions of Law: A “Bar or Lounge” is a Conditional Use in the Village District and is allowed if meeting the requirements of a Conditional Use. The Village District allows an unlimited number of Structures and Uses per Lot. Sections 450 B 4 and 5 a.

Dimensional Requirements:

Findings of Fact: the Applicant seeks a change of use in a portion of the interior of a pre-existing building. No exterior changes are sought. (Testimony of Paul Lockyear)

Conclusions of Law: Not applicable.

Article V Design Review Districts

Section 530: Development Review Board Site Plan and Design Review Required on Design

Review District Development

As required by Section 4414(1)(E), no Structure in any Design Review District (Historic or Village),”may be erected, renovated, substantially altered, restored, moved, demolished, or changed in Use or type of occupancy without a written decision and approval of the plans by the appropriate municipal panel.” (The Development Review Board).

Findings of Fact: The building in which the wine bar and lounge is to be located is in the Village and Historic Design Review District. It was for many years a hotel with restaurant and bar facilities as well as rooms. The Vermont House is presently configured as an inn with 10 guest rooms and an inn keeper’s apartment. It does not have food or beverage serving facilities. The current proposal makes no exterior changes to the building. The change in use of a portion of the ground floor of the building to a wine bar and lounge as shown on Exhibit 2 will not impinge upon the historic nature or construction of the building.

Conclusion of Law: This section is satisfied.

Article VI Flood Hazard District

Section 602 (A-C): Lands to Which These Regulations Apply

These regulations apply to development in all areas of the town identified as special flood hazard in and on the most current flood insurance studies and maps published by the Dept. of Homeland Security, FEMA, and National Flood Insurance Program (NFIP), as provided by the ANR pursuant to 10 V.S.A. section 753. The base flood elevations and floodway limits (zones A1 – A30, AE and AH) provided by the NFIP shall be used to administer provisions of the regulation. If none is provided by the NFIP then information available from the state or federal agencies or other sources shall be obtained and reasonably utilized.

Findings of Fact: 15 West Main Street is within the Floodway Fringe of the Flood Hazard District as defined by DHS, NFIP or FEMA flood maps. The Flood Hazard District regulations have been extensively addressed in the Prior Case. (Testimony of Craig Ohlson)

Conclusions of Law: See the Prior Case

Section 610 (A): Development Standards

Before a permit may be granted, the Development Review Board shall require the following standards:

A. 2. Floodway Fringe Areas:

Findings of Fact: The building in which the development is to take place is within the Floodway Fringe and is subject to the requirements of Section 610 A 2. However, the first floor of the building is above the Base Flood Elevation (BFE). The requirements of this section have been addressed in the Prior Case including but not limited to: moving all mechanicals out of the basement to the first floor and burying the propane tank. The conditions of the Prior Case have been met. (Testimony of Craig Olsen)

Conclusions of Law: The requirements of this section have been met.

B. Residential Development

Findings of Fact: The proposed development is not residential. (Application)

Conclusions of Law: Not applicable.

C. Non-Residential Development

Findings of Fact: The proposed renovation is in less than one half of the lower floor of a four story, commercial building. (Application)

Conclusions of Law: The existing building will not be “substantially improved” by the proposed renovation. As stated above, the Flood Hazard regulations have been addressed in the Prior Case.

D. Subdivisions

Findings of Fact: The proposed development is not a subdivision. (Application)

Conclusions of Law: Not applicable.

E. Enclosed Areas Below the Lowest Floor

Findings of Fact: As concluded above, the existing building will not be “substantially improved” by the proposed development.

Conclusions of Law: Not applicable.

F. Recreational Vehicles

Findings of Fact: No recreational vehicles are proposed to be placed on site. (Application)

Conclusions of Law: Not applicable

G. Accessory Structures

Findings of Fact: No accessory structures are proposed. (Application)

Conclusions of Law: Not applicable.

H. Water Supply Systems

Findings of Fact: Water is supplied by the municipal system which, purportedly, meets the requirements of this standard. (Testimony of Paul Lockyear as to the use of the municipal system)

Conclusions of Law: This standard is satisfied.

I. Sanitary Sewage Systems

Findings of Fact: The building is connected to the municipal septic system and has been for some time. No modifications are proposed. (Testimony of Paul Lockyear)

Conclusions of Law: This standard is satisfied.

J. On-Site Waste Disposal Systems

Findings of Fact: Refuse from operations will be stored above the BFE in secured containers. (Testimony of Paul Lockyear)

Conclusions of Law: This standard is satisfied.

K. Watercourse Carrying Capacity

Findings of Fact: No watercourse or floodway is proposed to be altered. (Application)

Conclusions of Law: Not applicable.

L. Securing Floatables

All floatables in any District and in an area which has historically flooded and all Flood Fringe Areas shall be raised above the 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.

Findings of Fact: All floatables will be secured. (Testimony of Paul Lockyear) The propane tank has been buried as required by the Prior Case. (Testimony of Craig Ohlson)

Conclusions of Law: The requirements of this section have been met.

Article VII Standards

Section 710: Use Performance Standards

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

Finding of Facts: There will be no continuous, permanent, ongoing, or frequent vibration on the premises. No machinery is to be utilized such as to create such vibration. Live music and/or recorded music is planned but will not create any perceivable vibration. (Testimony of Paul Lockyear)

Conclusions of Law: Standard 710 A 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: There will be no continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation at the property line. Live music and/or recorded music is planned but will not be at a sound level louder than that of a normal conversation.. The use does not require the continuous use of machinery. (Testimony of Paul Lockyear)

Conclusions of Law: Standard 7610 B is met.

C. Air Emissions for Commercial Operations: There shall be no emission of dust, ash, smoke or other particulate matter that 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: There will be no cooking of food on the premises eliminating the any requirement of hood venting to the exterior. There will be no emission of dust, ash, smoke or other

particulate matter. (Testimony of Paul Lockyear)

Conclusions of Law: Standard 710 C is met.

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 will cause injury or damage to human or animal health, vegetation, or property.

Finding of Facts: No injurious or noxious practices, as defined, will be conducted on the premises. (Testimony of Paul Lockyear)

Conclusions of Law: Standard 710 D is met.

Section 721: General Standards

The proposed use shall protect against adverse effect on:

A: Community, Municipal or Educational Facilities

Findings of Fact: The proposed Use will have up to 4 employees working at a time who will come from the local area. The alcohol will be served. (Testimony of Paul Lockyear)

Conclusions of Law: No additional stress will be placed on the Town educational system. The Applicant will meet with Wilmington Police and Fire representatives and address any safety or impact concerns raised by those departments.

B. Traffic on Roads and Highways

Findings of Facts: The proposed site is accessed from West Main Street in the heart of the Village. The speed limit through this area is 25 miles per hour. Stoplights at Ray Hill Road and the center of town ensure traffic maintains slow speeds through this area.

The proposed seating is for 22 customers.. Maximum number of daily patrons is anticipated to be 30 individuals. (Testimony of Paul Lockyear)

Conclusions of Law: The proposed development will have minimal impact on traffic. Standard 721 B 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 application is in conformity with all bylaws and ordinances. Standard 721 C is met.

D. Utilization of Renewable Energy & Natural Resources

Findings of Fact: Heat and air conditioning will be furnished by heat pumps.

Conclusions of Law: Standard 721 D is met.

E. Air Quality

Finding of Fact: See Section 710 C above

Conclusion of Law: Standard 721 E is met.

F. Character of the Area

Findings of Facts: The purpose of the Village District is:

“To retain the character of the existing village, provide for future residential and commercial development through historically appropriate Structures and business types at appropriate densities, and promote residential and tourist quality of life by preserving and developing a clustered village reflecting a visibly vibrant and energized community.

Development and reconstruction shall reflect the character and ambiance of the historic village. Businesses shall promote economic stability and sustainability of the town through contributing substantially to the economic viability of the community. Businesses shall provide a substantially unique retail and service experience to attract visitors and meet the needs of residents. Businesses shall reflect the special character and ambiance of the town. Businesses shall be small in scale consistent with the clustered downtown of the historic village.”

The Vermont House building in which the proposed development is to be located looks like a typical village inn and has served as such in times past. Only a minor portion of the interior of the structure will be utilized for the bar and lounge in keeping with past usage. Food preparation will be off site. Hours of public operation will be no earlier than noon and no later than 10 PM.
(Testimony of Paul Lockyear)

Conclusions of Law: The proposed development is consistent with the defined purpose of the Village District and is consistent with the historic nature of the Village. Standard 721 F is met.

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

A. Preserving the Town’s Character: The proposal requests a repurposing of a portion of the interior of an historic building by the addition of a wine bar and lounge to a former country inn with no change to the exterior

B. Economic Development Contributing to the Character of the Town: See A above

C. Development Consistent with the Rural, Agricultural, and Historic Nature of the Town: The proposed development of a wine bar and lounge in a historic building that was formerly a country inn. No exterior changes are sought.

D. Formula Businesses – Not applicable, not a formula business as defined

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

F. Building Scale Conformity – Not applicable, existing building

G. Utility Placement – Not applicable

Finding of Fact: The proposed use is within an existing building in the historic downtown. The addition of a wine bar and lounge in a small portion of a formerly active village inn does not detract from the historic or rural/agricultural character of the town. The presence of this use serves the needs of tourists and residents alike, contributing to services available and to the character of the town. (Testimony of Paul Lockyear)

Conclusions of Law: The proposed use 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. Standard 722 A, B, and C are met. Section 722 D, E, F and G are not applicable.

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 of a wine bar and lounge puts to proper use an historic inn that is currently not fully in use as an inn.

Conclusions of Law: As noted above, the proposed use preserves and contributes positively to the character of the town.

Section 730: Conditional Use – Specific Standards

A. Lighting and Glare: Shall be shielded and downcast. Glare and reflection is prohibited if it is a 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 District exterior lighting must be consistent with historic character of the commercial area of the village

Findings of Fact: No additional exterior lighting is sought.

Conclusions of Law: Standard 730 A is met.

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

Findings of Fact: The development will comply with all Vermont fire and safety regulations. (Testimony of Paul Lockyear)

Conclusions of Law: Standard 730 B is met.

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: Access to the premises is from the sidewalk on the northerly side of West Main Street. There is a cross walk on West Main Street within ten yards of the entrance giving pedestrian access from the southerly side of West Main Street. No disruption of present traffic flows is sought or within future plans. (Testimony of Paul Lockyear)

Conclusions of Law: Standard 731 C is met.

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

1. Provide off-street parking (except in the Historic Design Review District)

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 200 sq ft. retail.

4. Drive-up Windows: no waiting lines in public ROW

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: In the Historic Design Review District there is no requirement for on-site parking due to the clustered nature of the downtown.

Conclusions of Law: Standard 732 D is not applicable.

E. 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: Section 730 E is not applicable

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

Findings of Fact: There are very limited opportunities for visual barriers or buffering on this lot as the entrance stairs rise directly from the public sidewalk. However, the plantings that presently exist in the buffer zone between the front deck and sidewalk shall be maintained. See the Prior Case.

Conclusions of Law: No screening or buffer areas will be required beyond what presently exists as due to the interior nature of the proposed development there are no undue impacts on the aesthetics of neighboring properties, the neighborhood, or the roadway. Standard 730 F is met.

G. Land and Water Management: Protect properties, transportation systems, and public safety by

- a. 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 proposed interior wine bar and lounge in an existing building with municipal water and sewer will not create issues of land and water management. (Testimony of Paul Lockyear)

Conclusions of Law: Standard 730 G is met.

H 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 premises is served by the municipal water and sewer service. The applicant has testified that the present water and sewer allocations are sufficient for the proposed use. (Testimony of Paul Lockyear)

Conclusions of Law: Standard 730 H is conditionally met. The applicant shall file with the zoning administrator documentation showing sufficient municipal water and sewer allocations for the operation of a 22 seat wine bar and lounge.

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, impervious surfaces essential to stormwater detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural or manmade features, and renewable energy sources.

Findings of Fact: The beer and wine bar will occupy a small interior portion of an existing building. No exterior construction is contemplated.

Conclusions of Law: Not applicable

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

Findings of Fact: 15 West Main is in the congested downtown area and is not identified on the town Natural Resources Map, Nov 2016 as having any rare or uncommon animals; a significant natural community; a deer wintering area or wildlife habitat.

Conclusions of Law: The proposed Use will not have any adverse impact on wildlife habitats or corridor. Standard 730 J is met.

K. 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: Standard 730 K is not applicable.

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

Findings of Fact: 15 West Main St is within the Flood Hazard District

Conclusions of Law: See responses under Article VI above.

M. Energy Resources: Commercial Development shall comply with the Commercial Building Energy Standards. Residential development shall comply with Vermont Residential Building Energy Standards. 30 V.S.A. (51 & 54)

Findings of Fact: There is no construction of any structure. Solely the modification of a small portion of the interior of the premises..

Conclusions of Law: Section 730 M is not applicable.

N. 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: Section 730 N is 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. Ponds/Water Impounds
- G. Quarry Operations
- H. Recreational Vehicle Storage
- I. Solar Projects
- J. Wind Turbines

Findings of Fact: The proposed development does not fall into any of the above categories.

Conclusions of Law: Not applicable

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, Findings of Fact and Conclusions of Law in this decision. Any changes to the plans will require an administrative approval from the zoning administrator or a review by the Development Review Board as required by the Zoning Ordinance.
2. The Applicant shall file with the zoning administrator documentation showing sufficient municipal water and sewer allocation for the operation of a 22 seat wine bar and lounge.
3. The Applicant will meet with Wilmington Police and Fire representatives to determine any additional safety requirements.
4. Hours of operation shall be from noon to 10 P.M.
5. All floatables below the Base Flood Elevation shall be secured.
6. Any dumpsters or containers for the disposal of refuse shall be shielded by placement behind the Inn above the Base Flood Elevation.
7. Any sign lighting will be shielded and downcast with the minimum lumens necessary to meet the needs of the lighting purpose of preserving pedestrian and vehicular safety. Lighting shall not generate undue or excessive glare so as to interfere with neighboring properties and will not impede the vision of drivers.
8. There shall be no significant air emissions of dust, ash, smoke or other particulate matter.

9. There shall be no permanent or ongoing vibrations created.
10. There shall be no ongoing or permanent noise created.

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:

Peter Wallace
Fred Houston
Wendy Manners Seaman

OPPOSED:

none

ABSTAINING:

none

For the Board: Wendy Manners Seaman, Chairperson

Date: October 18, 2018

<p>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).</p>

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.