

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: **(1) Travis Wendel; (2) Eileen Ranslow; (3) Rear Side Church Street LLC; (4) Susan Lawrence; (5) LH Ponchos LLC; (6) Crooked Steeple LLC; (7) Town of Wilmington.**

Owner/Applicant(s) Mailing Address: **(1) PO Box 1057, Wilmington, VT 05363; (2) PO Box 426, Wilmington, VT, 05363; (3) PO Box 427, Wilmington, VT, 05363; (4) PO Box 443, Wilmington, VT, 05363; (5) c/o M. Fasulo, 16 Cornerstone Court, Plantsville, CT, 06479; (6) 655 Longmeadow Street, Longmeadow, MA, 01106; (7) PO Box 217, Wilmington, VT, 05363.**

Address of the subject property: **1 East Main Street and 4 to 16 South Main Street**

Tax Map: (1) #21222006; (2) #2122005; (3) #2122004; (4) #2122003; (5) #21220002; (6) #2022023; (7) #2022024.

A copy of the request is filed in the office of the Board and is referred to as: **#2018-086**

Description of Case per Public Notice:

Application # 2018-086 : Owner(s): **(1) Travis Wendel; (2) Eileen Ranslow; (3) Rear Side Church Street LLC; (4) Susan Lawrence; (5) LH Ponchos LLC; (6) Crooked Steeple LLC; (7) Town of Wilmington.**

Requesting: The construction of 358 linear feet of sidewalk from 1 to 16 South Main Street along the east side, move fountain monument to Library lawn, 4 pedestrian lights and a crosswalk at Beaver Street to access the west side of South Main Street

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

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

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

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

Public hearing was held on January 7th, 2019

Site Visit was conducted: No site visit was conducted

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: March 15, 2019

Approval expires on: February 15, 2021

In *addition* to the Applicant/Agent the following persons, heard by the Board in connection with this request, were determined by the Board to be “interested persons”: Copies of this decision have been mailed to those persons listed below.

None

The following presented testimony on behalf of the Applicant or an Interested Person:

Gretchen Havreluk and Christina Haskens, agents for the applicant .

EXHIBITS

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

1. Applications by: (1) Travis Wendel; (2) Eileen Ranslow; (3) Rear Side Church Street LLC; (4) Susan Lawrence; (5) LH Ponchos LLC; (6) Crooked Steeple LLC; (7) Town of Wilmington.
2. A set of plans entitled South Main Street Sidewalk, Wilmington, Vermont, Contract 2018-1, Permit Set by Dufresne Group as follows:
 - a. General Notes, Legend and Abbreviations dated November 20, 2018
 - b. Sidewalk Site Plan and Layout Plan dated November 20, 2018, being sheet C1
 - c. Sidewalk Profile and Cross Sections, dated November 20, 2018, being sheet C2
 - d. Sidewalk Typical Details, dated November 20, 2018, being sheet C3
 - e. Electrical Symbols, Abbreviations and General Notes, dated November 20, 2018, being sheet E1
 - f. Electrical Site Plan and General Notes, dated November 20th, 2018, being sheet E2
 - g. Electrical Details, date November 20, 2018, being sheet E3
3. A copy of minutes to The Potee Memorial Library Board of Trustees meeting dated November 13, 2018
4. An email from Scott Kimball of Visible Light Inc. dated 11/27/18, Re Wilmington.
5. An email from James Duggan dated 1/7/2019 re South Main Street Sidewalk Project
6. A copy of a power point presentation entitled “South Main Street Sidewalk Project”
7. Email from John Broker-Campbell of Agency of Natural Resources re minimal change within the Special Flood Hazard Area

APPLICABLE DISTRICT

Finding of Fact: Subject properties are identified as Tax Map: #21222006; #2122005; #2122004; #2122003; #21220002; #2022023; #2022024.

Conclusions of Law: The proposed development lies in the Historic Review portion of the Village District pursuant to Article V Design Review Overlay Districts, A portion of the proposed development lies within the Flood Hazard Area and as such requires consideration under Article VI. Flood Hazard District.

USES

Findings of Fact: The applicants are requesting construction of a sidewalk and lighting and not a use. The proposed development is not listed as a conditional use in the Village District. A distinction is made between “construction”, as this is, and “uses” in Article VI of the Flood Hazard District. In that this application is for the construction aspects of a municipal Use only, Use related Standards are not applicable and not addressed in this decision.

Conclusions of Law: The proposed development is for approved uses for this district.

CONSTRUCTION ASPECTS

Findings of Fact:

The sidewalk will be 358 linear feet running from the northerly end of 1 East Main Street, to the southerly end of 16 South Main Street. It will generally be 5 feet wide. Construction is to be of concrete. Granite curbing will replace existing curbing. Construction shall be as shown on plans in Exhibit 2.

Crosswalks to be located as shown on Exhibit 2d (Sheet C1).

Lighting will be located as shown on Exhibit 2f (Sheet E2)

The crosswalk warning sign for the crosswalk between the East and West sides of South Main Street will be positioned at the crossing, there will be no signage for the crosswalk between the public parking lot and the and the North side of Beaver Street. All signage will meet VT Department of Transportation guidelines. Testimony of Havreduk.

ARTICLE VI FLOOD HAZARD DISTRICT

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

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: A small portion of this project is within the special flood hazard area. There is no material impact on flood levels from the proposed project. Testimony from Craig Ohlson, Zoning Officer. Email from John Broker-Campbell indicating that the development is not expected to raise BFE (Exhibit 7).

Conclusions of Law: This requirement is satisfied.

SECTION 610 (A) DEVELOPMENT STANDARDS

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

A. Floodway Areas

1. Development within the regulatory floodway, as determined by Section 602, is prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice by a registered professional engineer certifying that the proposed development will result in no increase in flood levels during the occurrence of the base flood.

Findings of Fact: Project is not within the floodway. Testimony of Craig Ohlson

Conclusions of Law: This standard is not applicable

ARTICLE VII: 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 (Havrelok testimony)

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: This is a reconstruction of an existing walkway, as such there is be no continuous, permanent, ongoing or frequent noise associated with the project.

Conclusions of Law: Standard 710 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: This is not a Commercial Operation

Conclusions of Law: Standard 710 C is not applicable.

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: This is the reconstruction of an existing walkway. There are no operations that would give rise to any Injurious or Noxious Practices.

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 creation of a sidewalk running from the eastern end of South main street to the southerly end of the Library at 16 South Main Street ties the east and West sides of South Main Street together in a pedestrian friendly fashion. The pathway will be straightened from the east end of the Crooked Steeple LLC building to Beaver Street. These are improvements that will benefit the community. Testimony of Havreluk, Exhibits 2b Sheet C1 and 4

Conclusions of Law: This requirement is met

B. Traffic On Roads And Highways

Findings of Facts: The project is for the reconstruction of an existing walkway. There will be temporary disruption to traffic flow during reconstruction. The project will improve the pedestrian flow from north to south along the easterly side of South Main street by establishing a designated walkway which in the main will be 5 feet wide. The new crosswalks with the “landings” on the westerly side of South Main Street and on the Dixon Parking Lot ensures safer pedestrian access to that portion of South Main Street. Exhibit 2b Sheet C1

Conclusions of Law: The proposed development will have minimal impact on traffic. The improvements made to sidewalks and parking will improve public safety. This 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 application is in conformity with all bylaws and ordinances. Standard 721 C is met.

D. Utilization Of Renewable Energy And Natural Resources

Findings of Fact: The Town Plan Encourages the Efficient Use of Energy and the Development of Renewable Energy Resources through execution of action plans. See Goal 14 of 2018 Wilmington VT Town Plan.

Conclusions of Law: Standard 721 D is met.

E. Air Quality

Finding of Fact: See Section 710 C above

Conclusion of Law: This standard is not applicable.

F. Character Of The Area

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.”

Finding of Fact: A number of initiatives have been addressed by this project that will preserve the character of the area. The fountain in front of the library will be moved to a position immediately behind the new walkway and will be sited on a new concrete pad. A new stone drain pit will be placed under the monument to facilitate drainage. The tree located outside 4 South Main Street will be preserved and an arborist will be consulted during the construction phase to ensure this. Lighting has been designed to be sympathetic to the area. Testimony of Havreluk.

Conclusions of Law: This standard is met.

ARTICLE VII SPECIFIC STANDARDS

Section 730: Conditional Use – Specific Standards

A. Lighting and Glare: Shall be shielded and downcast. Glare and reflection is 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 new lighting which begins at the northerly end of South Main Street and continues to Beaver Street at the southerly end of the project will be at a lumen strength of 2900 giving a far more sympathetic and less harsh lighting than was experienced in West Main Street. Utilizing a lighting system known as SV2, see appendix 4, Glare will be reduced by 76%. All lighting will be

downcast

Conclusion of Law: Standard 730 A is met.

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

Findings of Fact: The project improves the pedestrian flow from north to south along the easterly side of South Main street by establishing a designated walkway which in the main will be 5 feet wide. The new crosswalks with the “landings” on the westerly side of South Main Street and on the Dixon Parking Lot ensures safer pedestrian access to that portion of South Main Street. Exhibit 2b Sheet C1

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 reviewed for safety, ease of flow and efficiency.

Findings of Fact: The project improves the pedestrian flow from north to south along the easterly side of South Main street by establishing a designated walkway which in the main will be 5 feet wide. The new crosswalks with the “landings” on the westerly side of South Main Street and on the Dixon Parking Lot ensures safer pedestrian access to that portion of South Main Street. Exhibit 2b Sheet C1

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 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 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: This project is within the HDRD and is for the refurbishment of an existing walkway. There was an acknowledgement that parking in the area was limited and that the public were parking too close to driveways. It was agreed to impose a restriction on parking at the entrance to driveways on the east side of South Main Street. The project itself will improve pedestrian circulation and safety with the addition of two pedestrian crossings.

Exhibit 2 demonstrates that care has been taken to ensure that traffic interruption is at a minimum during reconstruction and that the project has taken into consideration the safety of the public and maximizing the attractiveness of the area.

Conclusions of Law: Where applicable Standard 732 D is met.

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.

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 properties and roads.

b3. Screening and Buffer of Ground Mounted Solar Arrays: Required when ground mounted solar arrays have an undue adverse aesthetic impact on surrounding properties and roads. Shall be minimum of 10 feet where reasonable and possible.

Findings of Fact: While some green space is lost in the widening of the walkway, this is offset by the increase in the integration of the area and safety of pedestrians. Whilst not a condition it may be possible to introduce more planting around the area of the library. The tree located outside 4 South Main Street will be preserved and an arborist will be consulted during the construction phase to ensure this.

Testimony of Havreduk.

Conclusions of Law: 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, stormwater 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: This is a reconstruction of an existing walkway and the intent is to use the existing storm water system. Any increase in storm water runoff will be minimal if any at all. Dufresne Group, Consulting Engineers.

Conclusions of Law: Standard 730 G is met.

H. Wastewater and Potable Water: A permit may be issued upon receipt of evidence thereis a wastewater and potable water permit. If none if 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: This is a reconstruction of an existing walkway.

Conclusions of Law: Standard 730 H is not applicable.

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: While some green space is lost in the widening of the walkway, this is offset by the increase in the integration of the area and safety of pedestrians.

The tree located outside 4 South Main Street will be preserved and an arborist will be consulted during the construction phase to ensure this. Testimony of Havreluk.

Conclusions of Law: Standard 730 H is met.

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

Findings of Fact: South Main Street 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: 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: Not applicable.

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

Findings of Fact: See Section 602 above

Conclusions of Law: See Section 602 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 commercial or residential land development.

Conclusions of Law: Not applicable.

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

Findings of Fact: There is no requirement for a technical review as the applicant has satisfied the review requirements.

Conclusions of Law: Standard 730 N is met.

SIGNS ALLOWED/EXEMPT SIGNS NOT (NOT REQUIRING A PERMIT) SECTION 823

Findings of Fact: A warning sign for the crosswalk joining east South Main Street to west South Main Street will be placed at the crosswalk. The sign will correspond to the requirements of the Vermont Agency of Transportation and be maintained by the Town of Wilmington.

Conclusion of Law: The sign is a “government sign” as defined in Section 823 D and exempt from permitting.

CONDITIONS:

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

1. To maintain the character of the area and the district, the lighting fixtures shall be operated from dusk to dawn.
2. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits 1,2,4 and 6 and the testimony provided. 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.
3. Development and construction shall be managed to address all safety hazards.
4. Noise and vibration will be minimized during construction so as to not negatively impact neighboring properties between the hours of 8 PM and 8 AM.
5. All facilities, crosswalks and walkways will be handicapped accessible compliant with ADA.
6. All sidewalks, crosswalks, points of intersection between the sidewalk areas of vehicular movement and parking will be made safe for the public and compliant with VTrans safety recommendations and requirements.
7. 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 the drivers of motor vehicles and shall not produce undue glare into any residence in the area between 1 East Main Street and 16 South Main Street.
8. Lighting fixtures will provide diffused lighting to reduce glare.
9. Storm water runoff will be directed to the storm water drains
10. All paved surfaces will be maintained during hours of use for public safety including repairs, plowing, sanding, de-icing and such other maintenance as may be required.
11. Ingress/egress from drive ways on the east side of South Main Street will have 4 to 5 ft of parking restriction on each side of the egress/ingress driveways and signage and/or lines must be added designating those no-parking restrictions

The applicants are 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:

Jessie Couture, Wendy Manners, Fred Houston, Cheryl LaFlamme, Paul Lockyear.

OPPOSED: None.

ABSTAINING: None

For the Board: Wendy Manners, Chairperson Date: February 15, 2019_____

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.

