

**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: **Rear Side Church Street LLC (Fred Houston)**

Owner/Applicant(s) Mailing Address: **PO Box 427, Wilmington VT 05363**

Agent Mailing Address:

Address of the subject property: **6 South Main Street**

Tax Map: **#021-22-004**

A copy of the request is filed in the office of the Board and is referred to as: **Application #2019-001**

Date of Application: **1/15/19**

Zoning Ordinance Then in Effect: Adopted **October 9, 2017**

**Description of Case per Public Notice:**

Application #2019-001 :Owner: Rear Side Church Street LLC – Fred Houston

Application is being made for a change of use of the first floor from real estate office to retail store, moving the real estate office to the second floor. Village zoning district (Historic Review District). Sections 450 B 4, 710, 720, 721, 722, 723 and 730. Location: 6 South Main Street

Notice for a public hearing was published in the Valley News on: **January 24, 2019**

Notice was posted in three public places on: **January 24, 2019**

A copy of the notice was mailed to the applicant on: **January 25, 2019**

A copy of the notice was mailed to the abutters on: **January 25, 2019**

Public hearing was held on: **February 11, 2019**

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: March 15, 2019**

**Approval expires on: February 14, 2021**

In addition to the Applicant, the following persons heard by the Board in connection with this request, were determined by the Board to be “interested persons”: Cordelia Garofalo and Eric Silverstein.

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 First and Second floors (exhibit 2)

### **SYNOPSIS**

The applicant proposes to move the existing Service Business (Real Estate) Use to the second floor and create a Retail Business Use on the first floor (See Exhibit 2).

### **APPLICABLE DISTRICT**

**Finding of Fact:** Subject property is identified as Tax Map: 021-22-004 and has an address of 2 South Main Street

**Conclusions of Law:** The proposed development is located in the **Village District** within the **Historic Design Review 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:** Most recently this structure has been an office and apartment.

**Conclusions of Law:**

### **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.

**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 is located is in the Village and Historic Design Review District. 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 retail kitchen store and moving the real estate office to the second floor 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:** 2 South Main Street is not in the Special Flood Hazard area although the building did have some water impact from Hurricane Irene on August 28, 2011.

**Conclusions of Law:** This section of law is satisfied.

## **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.

**Conclusions of Law:** Standard 710 A is met. (Applicant testimony)

**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. The use does not require the continuous use of machinery. . (Applicant testimony)

**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:** There will be no emission of dust, ash, smoke or other particulate matter. . (Applicant testimony)

**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. (Applicant testimony)

**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. (Applicant testimony)

**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 South 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. Maximum number of daily patrons is anticipated to be 20-30 individuals. While initially hours of operation will be more limited, the applicant requests permission for operation up to a maximum of 8 AM to 8 PM seven days a week. (Applicant testimony)

**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 will be furnished by building owner (testimony of Fred Houston).

**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.”

This is a new Use in an established building. The proposed Uses of Retail Business selling novelty kitchen items and an existing Service Business (Real Estate) is consistent with the character of the area and contributes to the experience of residents of visitors alike in the clustered, mixed use downtown.

**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**

#### **Finding of Facts:**

**A. Preserving the Town’s Character:** The proposal requests a change of use for a portion of the first and second floors with no change to the exterior. Proposed Uses are consistent with preserving the character of the town (see above).

**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 is a change of use to retail on the first floor and real estate office on the second. 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

**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 kitchen retail store and real estate office does not impact the character of the town in an existing building.

**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. (Applicant testimony).

**Conclusions of Law:** Standard 730 A is met.

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

**Findings of Fact:** The use will comply with all Vermont fire and safety standards. (Applicant testimony).

**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 South Main Street. No disruption of present traffic flows is sought or within future plans. (Applicant testimony).

**Conclusions of Law:** Standard 730 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 un-obscured 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. Applicant agrees to remove an old tree stump from the side yard and maintain a clear back yard with no debris, stored goods, or trashcans. (Applicant testimony)

**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. Applicant agrees to remove an old tree stump from the side yard and maintain a clear back yard with no debris, stored goods, or trashcans. 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 change of use in an existing building with municipal water and sewer will not create issues of land and water. (Applicant testimony)

**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 Fred Houston)

**Conclusions of Law:** Standard 730 H 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, 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 retail and real estate office will occupy a small interior portion of an existing building. No exterior construction is contemplated. No Natural resources or natural features will be impacted.

**Conclusions of Law:** Not applicable

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

**Findings of Fact:** 6 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:** 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:** 6 South Main St is not within the Flood Hazard District

**Conclusions of Law:** Standard 730 I is not applicable.

**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 change of Use 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

**DECISION:**

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

**CONDITONS:**

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 use.
3. The Applicant will meet with Wilmington Police and Fire representatives to determine any additional safety requirements.
4. While initially hours of operation will be more limited, the applicant is approved for operation up to a maximum of 8 AM to 8 PM seven days a week.
5. 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.
6. All signage shall be approved by the Zoning Administrator prior to installation.
7. There shall be no significant air emissions of dust, ash, smoke or other particulate matter.
8. There shall be no permanent or ongoing vibrations created.
9. There shall be no ongoing or permanent noise created.
10. Applicant agrees to remove an old tree stump from the side yard and maintain a clear back yard with no debris, stored goods, or trashcans.

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:

Jessie Couture

Cheryl LaFlamme  
Wendy Manners Seaman

OPPOSED:

none

ABSTAINING:

None

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For the Board: Wendy Manners Seaman, 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.*