

TOWN OF WILMINGTON
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT AND CONCLUSIONS OF LAW
WILMINGTON, VERMONT 05363

A request for a permit was made to the Board by: LH Poncho's LLC

Owner/Applicant(s) Mailing Address: 10 North Plaza Industrial Rd., Bld. 1B Suite 3, Wallingford, CT 06492

Agent: Susan Lawrence and Taryn Lawrence

Agent Mailing Address: P.O. Box 443, Wilmington, VT 05363

Address of the subject property: 10 South Main Street

Tax Map: #021-22-2

A copy of the request is filed in the office of the Board and is referred to as: **Application #2019-012**

Date of Application: **May 20, 2019**

Zoning Ordinance Then in Effect: Adopted October 9, 2017

Description of Case per Public Notice:

Application #2019-012, Owner: LH Ponchos, LLC, Agent: Susan Lawrence & Taryn Lawrence. Application is being made for a Conditional Use Review to demolish the back portion of an historic building (former Poncho Wreck). Village (Historic Design review) zoning district. Sections 530, 720, 721, 722 & 723. Location: 10 South Main Street.

Notice for a public hearing was published in the Valley News on: **May 30, 2019**

Notice was posted in three public places on: **May, 30, 2019**

A copy of the notice was mailed to the applicant on: **May 28, 2019**

A copy of the notice was mailed to the abutters on: **May 28, 2019**

Public hearing was held on: **June 17, 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: July 24, 2019

Approval expires on: June 24, 2021

In addition to the Applicant and the Applicant's agents, Susan Lawrence and Taryn Lawrence who were verbally appointed agents by Nick Lombardi, principal in LH Poncho's LLC, by telephonic means, the following persons heard by the Board in connection with this request: 1) witnesses for the applicant 2) persons who were determined by the Board to be "interested persons":

Witnesses for the applicant: Margret Streeter

Interested Parties: None

EXHIBITS

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

1. Application consisting of 3 pages.
2. Abutters List
3. Copy of Wilmington Listers Card for parcel 00021-12-2002
4. Copy of a plat entitled "Property in Wilmington Village" by Guy C. Hawkins, Engr, 1958
5. Copy of an aerial plat showing 10 South Main St.
6. Excerpt from the National Register of Historic Places Inventory - Nomination Form, entered Aug 11, 1980, being Continuation sheet 7-3, Item number 7 Page 3
7. Copy of an e-mail from Devin Colman, State Architectural Historian, to Craig Ohlson declining review.
8. Photograph of the front of the building on South Main Street.
9. Photograph of the north side of the building to the rear.
10. Photograph of the gutted interior of the building showing framing in the addition to the historic structure.

SYNOPSIS

The applicant proposes to remove two modern additions on the easterly end of the building at 10 South Main Street known as "Poncho's Wreck", hereinafter "Poncho's". No use is presently proposed.

APPLICABLE DISTRICT

Findings of Fact: Subject property is identified as Tax Map: 021-22-2 and has an address of 10 South Main Street.

Conclusions of Law: The proposed development is located in the **Village District** within the **Historic Design Review District** requiring review under Section 530 B.

USES

Findings of Fact: The building is currently vacant and has been since Flood of 2011. Prior to that time it was a restaurant. The building was completely gutted after the flood. No use is presently proposed.

Conclusions of Law: Not applicable.

Dimensional Requirements:

Findings of Fact: The building is pre existing on a pre-existing lot. There are no setback requirements in the Village District

Conclusions of Law: Not applicable

Article V Design Review Districts

Section 522: Goals of the Historic Design Review District

The Site Plan and Design Goals of the Wilmington Historic Design Review District are as follows:

- A. To preserve the historic and cultural heritage of the historic downtown.

- B. To support maintenance, change and preservation of building and property in accordance with the design guidelines of this zoning ordinance and consistent with recognized and accepted standards for historic preservation projects.

- C. To promote the Use of buildings and property in a manner that benefits the community and individual property owners, while preserving those features that have architectural or historic merit.

- D. To attract visitors and encourage tourism by enhancing the visual character as a New England village.

- E. To encourage maintenance and preservation of building and property and changes to support a visually attractive village for the pleasure of residents and visitors.

- F. To encourage and support economic growth and prosperity within the community while maintaining the New England Character.

- G. To encourage public and private investments that may result in a positive contribution to visual harmony and economic vitality, and protect these assets for future generations.

The goals of this District shall be considered by the Development Review Board when considering proposed land development for this District.

Findings of Fact: Appendix II shows “Poncho’s” and the “barn” behind Poncho’s as “12 South Main St”, the street designation is incorrect and should be “10 South Main Street”. Both Poncho’s and the “barn” are shown as listed on the National and Vermont Register of Historic places in that Appendix. Notwithstanding this designation, the “barn” was removed decades ago and an extension of “Poncho’s” was built in the 1970’s. Testimony of the Zoning Administrator. It is this extension that is sought to be removed. The removal of this portion of the building will return

“Poncho’s” to its historic configuration in accordance with recognized and accepted standards for historic preservation. It will encourage the maintenance, preservation and economic vitality of the historic building which remains. This will keep South Main Street visually attractive and enhancing its inclusion in the New England village which is Wilmington.

Conclusion of Law: The proposal as presented meets the goals of the Historic Design Review District.

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 structure proposed to be demolished is located in the Historic Design Review District. No use is presently proposed.

Conclusions of Law: The proposal will be reviewed by the Development Review Board.

VI Flood Hazard District

Section Article 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: 10 South Main Street is not within the Floodway Fringe of the Flood Hazard District as defined by DHS, NFIP or FEMA flood maps. Testimony of the Zoning Administrator

Conclusions of Law: Article VI does not apply.

Article VII Standards

Section 710: Use Performance Standards

Findings of Fact: No use for the property is being presently sought.

Conclusions of Law: Not applicable

Section 721: General Standards

The proposed use shall protect against adverse effect on:

A: The Capacity of Existing or Planned Community, Municipal or Educational Facilities

Findings of Fact: The demolition will create additional vacant space behind Poncho’s. No use is presently proposed

Conclusions of Law: Not applicable

B. Traffic on Roads and Highways

Findings of Fact: The building to be removed is accessed from South Main Street and lies behind Poncho’s. It does not front on any town highway. No use is presently proposed.

Conclusions of Law: Not applicable.

C: Bylaws and Ordinances in Effect

Findings of Fact: 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

Findings of Fact: The proposal does not use any additional energy.

Conclusions of Law: Standard 721 D is met.

E. Air Quality

Findings of Fact: The demolition of the building may cause some dust that may require some mitigation.

Conclusion of Law: Standard 721 E is conditionally met.

F. Character of the Area

Findings of Fact: 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 removal of the “extension” to the Poncho’s Wreck building returns the building to its historic state. The development takes place off the main roadway and is hidden from the remainder of the Village. The removal of this “extension” will not detract from the character and ambiance of the historic village.

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 removal of the newer portion of "Poncho's" leaving open space which is not on the street front preserves the town's character as the historic Poncho's building is being maintained and enhanced by the project. There is no use presently proposed for the space.

B. Economic Development Contributing to the Character of the Town: No use is presently proposed.

C. Development Consistent with the Rural, Agricultural, and Historic Nature of the Town: Not applicable. No use is presently proposed

D. Formula Businesses: Not applicable

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

F. Building Scale Conformity – Not applicable, the project removes additions to an historic building creating open space.

G. Utility Placement – Not applicable,

Findings of Fact: The removal of recent additions to a historic structure preserves the character of the town.

Conclusions of Law: The proposed removal and 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.

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)

A. Historic Structures: No development shall compromise a certified Structure's historic status.

Findings of Fact: The extensions to Poncho's were build in the 1970's and are not historic structures. Consultations with the Vermont Department of Historic Preservation shows that the structure is not of an historic nature. Exhibit 7

Conclusions of Law: This condition is satisfied.

B. Historic Preservation, Rehabilitation and Restoration. Historic features and historic Structures shall, to the extent reasonable and possible, be preserved, rehabilitated, or restored.

Findings of Fact: The structure is not historic.

Conclusions of Law: Not applicable.

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 District exterior lighting must be consistent with historic character of the commercial area of the village

Findings of Fact: No building or use proposed.

Conclusions of Law: Not applicable.

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

Findings of Fact: There will be dust and debris.

Conclusions of Law: The applicant will contain all debris within the parking area behind Poncho's and the Anchor. It will be fenced prior to removal to prevent access by the public.

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: What is sought is the demolition of a building which does not front on any street. Not applicable.

Conclusions of Law: Not applicable

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: The property is in the Village Historic Design Review District. There is no requirement for on-site parking in this district and no building is being proposed.

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: What is proposed is solely the removal of a building. No use is proposed.

Conclusions of Law: Not applicable.

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: What is proposed is the removal of a building leaving a permeable surface which will enhance the ability of the space to absorb and retain storm water. The project is not near any rivers or streams.

Conclusions of Law: This condition is satisfied.

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 proposal is for the removal of a building. Not applicable

Conclusions of Law: 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 storm water detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural or manmade features, and renewable energy sources.

Findings of Fact: The project concerns the removal of a portion of a building in the heart of the Village.

Conclusions of Law: Not applicable

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

Findings of Fact: 10 South 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 within 250 feet of a body of water of sufficient size

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: 10 South Main St is not within the Flood Hazard District

Conclusions of Law: Not applicable

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

Findings of Fact: Structures are being removed.

Conclusions of Law: 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 will minimize dust pollution during the demolition and remove any asbestos or other hazardous waste in accordance with Federal and State regulations.
3. The applicant will ensure that the demolition site is properly fenced to prevent public access.
4. 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:

Cheryl LaFlamme
Paul Lockyear
Charles Foster
Fred Houston

OPPOSED:
None

ABSTAINING:
None

For the Board: Cheryl LaFlamme, Vice Chairperson

Date: June 24, 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.

