

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: Susan Lawrence & Taryn Lawrence

A copy of the request is filed in the office of the Board and is referred to as: **#2019-022**

Description of Case per Public Notice:

Application # **2019-022_** : Owner(s): Susan Lawrence & Taryn Lawrence
Application is being made for Conditional Use Review to allow construction of a patio & parking lot. Village (Historic Design review) zoning district. Sections 450 (B) 4, 710, 720, 721, 722 & 723.
Location: 10 South Main Street.

Notice for a public hearing was published in the Valley News on: **June 27, 2019**

Notice was posted in three public places on: **June 27, 2019**

A copy of the notice was mailed to the applicant on: **June 27, 2019**

A copy of the notice was mailed to the abutters on: **June 27, 2019**

Hearing was held on : July 15, 2019

Appeal period for this Case expires on: September 12, 2019

Approval expires on: August 12, 2021

The following presented testimony as the applicant or on behalf of the Applicant or as an Interested Person: Susan Lawrence & Taryn Lawrence.

SYNOPSIS

The application proposes a change of use for a leased property that has fallen out of use to a parking area and outdoor seating.

EXHIBITS

The following Exhibits were placed in evidence by the Applicant or their Agent:

1. Application
2. Abutters list
3. Site Plan
4. Lot Map

APPLICABLE DISTRICT

Finding of Fact: Subject property is in the Historic Design Review District.is identified as Tax Map: # 021-22-002

Conclusions of Law: The proposed development lies in the Historic Design Review District.

USES

Findings of Fact: The proposed Uses are for a parking lot and patio area for additional seating in a leased space. There will be 3 parking spaces and 2 feet of patio area.

Conclusions of Law: Uses proposed are allowed within the Historic Design Review District.

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: The proposal to change the use of a property that has fallen out of use supports the goal of Historic Design Review District specifically E and F above as well as adding additional parking to the Downtown area.

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

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: The subject property is not within the Flood Hazard Area (Testimony of Craig Ohlson).

Conclusions of Law: Flood Hazard District regulations are not applicable to the proposed Use.

Conclusions of Law: Standard is met.

DIMENSIONAL REQUIREMENTS

Findings of Fact: Dimensional requirements of lot size, frontage, building height, and setbacks are not applicable. The Historic Design Review District has a zero setback. Setback requirements are met.

Conclusions of Law: Dimensional Requirements are 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.

Findings of Fact: The proposed use will not create vibration. (Testimony of the applicant.)

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: The proposed use will not create noise. (Testimony of the applicant.)

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

Findings of Fact: There will be no air emissions. (Testimony of the applicant.)

Conclusions of Law: This condition is satisfied.

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.

Findings of Fact: No injurious or noxious practices, as defined, will be conducted on the premises. (Testimony of the Applicant)

Conclusions of Law: Standard 710 D is met.

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: There will be no additional employees. All Use of this property is for the enhance of the community, it's residents, and for economic viability of the area. This is a minor expansion of an existing business for additional parking and outdoor seating.

Conclusions of Law: No additional stress will be placed on the Town facilities or educational

system. (Testimony of the applicant.)

B. Traffic on Roads and Highways

Findings of Fact: There will be an additional 3 parking spaces in an existing lot dedicated exclusively for patrons of the Anchor and La Casita.

Conclusions of Law: Standard 721 B is met.

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: Not applicable

Conclusions of Law: Standard 721 D is met.

E. Air Quality

Findings of Fact: See Section 710 C above

Conclusion of Law: Standard 721 E is 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 proposed expansion of parking and outdoor seating for an existing restaurant is in keeping with the character and ambiance of the historic village. The restaurant supports economic viability of the downtown by providing one of the few consistently open restaurants with broad appeal to locals and visitors.

Conclusions of Law: The proposed parking and outdoor seating expansion will provide additional access to the restaurants for visitors and residents, enhancing this popular downtown feature. The restaurant provides for the needs of residents and visitors, enhancing economic viability and promoting sustainability of the town. 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

Findings of Fact:

A. Preserving the Town's Character: The restaurant has preserved its structures to maintain the New England charm & character.

B. Economic Development Contributing to the Character of the Town: The restaurant will provide expanded availability of seating and parking options.

C. Development Consistent with the Rural, Agricultural, and Historic Nature of the Town: Proposed expanded seating and parking is consistent with nature of town.

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

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

F. Building Scale Conformity – Not applicable

G. Utility Placement – Not applicable

The proposed use of expanded parking and seating meets all standards.

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)

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

Findings of Fact: The proposed Use will preserve this compromised historic structure which has lain in disuse since the flood of 2011.

Conclusions of Law: The standard is met.

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: Not applicable

Conclusions of Law: This condition is satisfied.

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: There will be no lighting in the leased space. Any additional lighting will be downcast and on the exterior of the Anchor building (testimony of applicant).

Conclusions of Law: Standard 730 A is met.

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

Findings of Fact: There are no physical hazards.

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 currently in use driveway between the Anchor and the leased building and with the new parking the site line will be improved from what

is there presently. We suggest considering a mirror on the Anchor building for better viewing of cars driving into the driveway.

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: The property is in the Village Historic Design Review District. There is no requirement for on-site parking in this district. Parking spaces shall be 10x18 (applicant testimony). This parking and outside seating area is not within the view of any public areas outside of the restaurants using these services. There is a contract for snow and ice removal (applicant testimony).

Conclusions of Law: 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.

Findings of Fact: Landscaping in the parking/outside seating area will include movable flower barrels behind the Ponchos building, plantings in the area of the additional patio and front of the La Casita building will be shrubs and perennials (testimony of the applicant).

Conclusions of Law: This condition is satisfied.

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: Water from the parking area sheets to South Main Street drainage. The new parking will be impermeable and in that existing land use is impermeable surface, the proposed use will not increase the impermeable surface or negatively impact water absorption or run-off.

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: Expanded restaurant seating will utilize the water and sewer allocations maintained by La Casita which is leasing the property. While some of the allocation will be released as it is in excess of that needed, allocation for future use of the Ponchos building will be retained.

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: There will be no impact on natural resources and no additional impermeable surface.

Conclusions of Law: Standard is met

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

Findings of Fact: This property 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: This property is not a shoreland.

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: Property is not within flood district.

Conclusions of Law: Not applicable

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

Findings of Fact: Not Applicable.
Conclusions of Law: Section 730 M is met

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.

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 5,6, 7 and the testimony provided. Any changes to the plans will require an administrative approval from the Zoning Administrator and/or a review by the Development Review Board, in conformance with the ordinance.
2. Completion of Landscaping as provided by testimony of the applicant. Shrubs and perennials will be maintained in good condition in perpetuity.

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:

Wendy Manners Seaman, Chair
Diane Abate
Cheryl LaFlamme
Paul Lockyear
Charles Foster

OPPOSED:

None

ABSTAINING:

None

For the Board: Wendy Manners Seaman, Chairperson

Date: August 12, 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.