

**TOWN OF WILMINGTON**  
**DEVELOPMENT REVIEW BOARD**  
**FINDINGS OF FACT AND STATEMENT OF FINDINGS**  
**WILMINGTON, VERMONT 05363**

**Description of Case**

**Application # 2020-001**

Application is being made proposing to replace the existing sidewalk and wastewater line along the northern side of Route 9/East Main St for properties located between 28 East Main St through 76 East Main St in Wilmington, VT. The project contemplates installing two (2) separate retaining walls sections, where it is necessary to connect properly with the existing topography of the adjacent parcel, three (3) new crosswalks along Route 9, granite curbing, and six (6) pedestrian scale lights within the project limits.

Property Owners:

House Number	Name	Address
28	Laurie May Boyd	P.O. Box 1437, Wilmington, VT 05363
34	Families 1st of So Vt	48 N Main St, P.O.Box 939, Wilmington, VT 05363
36	Edward & Julie Sullivan	P.O. Box 932, Wilmington, VT 05363
38	Judith Nelson (nee Lauderback)	4247 Wickford Rd, Baltimore, MD 21210-2929
40	Robert Grinold	210 Rt 9 E, Wilmington, VT 05363
44	Shea Funeral Home	P.O. Box 957, Bennington, VT 05201
48	Thomas & Lorraine Cavaliere	27 Virgina Rail Dr. Bethany, CT 06524
54	Ed Erhard	70-09 73 <sup>rd</sup> Pl. Glendale, NY 11385
56	Stephanie Pohle	1526 Old Jacksonville Rd, Warminster, PA 18974
64		
68	Francis & Karen Settanni	P.O.Box 667, Wilmington, VT 05363
70	John & Patricia Tiddes	P.O.Box 745, Wilmington, VT 05363
74	Christopher & Jessica Medina	P.O.Box 1235, Wilmington, VT 05363
76	Alexander Struzinski	P.O.Box 2, Wilmington, VT 05363

**Each of these property owners have filed application in the name of their respective properties and each have named Gretchen Haverluk as their duly appointed agent.**

House Number	Tax Map Property #
28	21-21-042.000
34	21-21-076.000
36	21-21-077.000
38	21-21-078.000
40	21-21-079.000
44	21-21-080.000
48	21-21-081.000
54	21-21-082.000

56	21-21-083.000
64	21-21-084.000
68	21-21-085.000
70	21-21-086.000
74	21-21-087.000
76	21-21-088.000

A copy of the request is filed in the office of the Board and is referred to as: **#2020-001**

Notice for a public hearing was published in the Valley News on: **2/3/20**

Notice was posted in three public places on: **1/23/20**

A copy of the notice was mailed to the applicant on: **2/3/20**

A copy of the notice was mailed to the abutters on: **2/3/20**

Public hearings were held on March 21, 2016, March 28, 2016 and April 5, 2016

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: April 15, 2020**

**Approval expires on: March 16, 2022**

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, agent for the applicants at all hearings**  
**Jason Lazell, Town of Wilmington**  
**Evan Detrick from VHB**

**EXHIBITS**

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

1. Application from Agent Gretchen Havreluk
2. List of property owners along proposed work locations
3. Photos of proposed retaining wall
4. Notice of original hearing warning
5. Notice of revised hearing warning

- 6. List of abutters
- 7. Property map of property owners along proposed work location
- 8. A set of plans entitled Proposed Improvements, East Main St Sidewalk, TAP TA 164) – STP BP17(13) prepared by VHB “FINAL PLANS JANUARY 2020” (29 pages)

**APPLICABLE DISTRICT**

**Finding of Fact:** Subject properties are identified as :

House Number	Tax Map Property #
28	21-21-042.000
34	21-21-076.000
36	21-21-077.000
s38	21-21-078.000
40	21-21-079.000
44	21-21-080.000
48	21-21-081.000
54	21-21-082.000
56	21-21-083.000
64	21-21-084.000
68	21-21-085.000
70	21-21-086.000
74	21-21-087.000
76	21-21-088.000

**Conclusions of Law:** Lots 28-76 on East Main St lie within the Village District, described in Article II, Section 270 ( B). Lots 28 – 44 also fall within the Village Design Review District, and Overlay District, as described Article V, Section 510, 511, and 512.

**USES**

**Findings of Fact:** The applicants are requesting Community Facility Developemnt, specifically a municipal sidewalk, railing and lighting. The proposed development is for a municipal use.

**Conclusioins of Law:** Community Facility is a Conditional Use in the Village District.

**SECTION 448: COMMUNITY FACILITY DEVELOPMENT EXCEPTIONS**

All Community Facility development is subject to the terms of this ordinance including the application, approval and Permitting of the Zoning Administrator and Development Review Board, with the exception that, pursuant to 24 VSA Section 4413:

A. Zoning restrictions may not interfere with the municipality’s intended use, and

B. Only those zoning restrictions of the following types may be applied:

- a. location
- b. size
- c. height
- d. building bulk
- e. yards
- f. courts
- g. setbacks

- h. density of buildings
- i. off-street parking
- j. loading facilities
- k. traffic
- l. noise
- m. lighting
- n. landscaping and screening

Zoning provisions for other than these types of restrictions may not be applied to municipal projects.

Community Facility includes development, including sidewalks, for the following Uses:

1. State or Community-owned and operations institutions and facilities.

2-5 not applicable.

**Finding of Facts:** The proposed project is a Community Facility Development subject to zoning permits and Development Review Board review, limited to the items defined above.

**Conclusions of Law:** Provisions a, b, c, d, e, f, g, h, l, and j are not applicable. Standards k, m and n will be applied to this application. Specifically: traffic, noise, lighting, landscaping and screening. Per testimony, work hours will be restricted to 8am-8pm Monday through Friday. Traffic will be monitored & controlled VTrans standards to ensure proper traffic flow & pedestrian safety.

#### **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:** Lands applicable to this application are not within lands described in the Flood Hazard District.

**Conclusions of Law:** This requirement is satisfied.

#### **VILLAGE DESIGN REVIEW DISTRICT**

##### **Article V Design Review Districts**

##### **Section 512: Goals of the Village Design Review District**

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

- A. To promote the Use of buildings and property in a manner that benefits the community and individual property owners, while preserving the visual character of the village.
- B. 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 proposed sidewalk development benefits the community through a safer and more attractive pedestrian passageway. The rails and natural stone retaining walls preserve the visual character of the Village. Sidewalk improvement will encourage and support economic growth by presenting a more walkable village.

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

## **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:** See Section 448 above

**Conclusions of Law:** Not Applicable

**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:** Section 448 allows application of noise related zoning regulations. Use of the sidewalks will be for normal municipal community use. Noise will not occur at more than that of a normal conversation.

**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:** See Section 448 above.

**Conclusions of Law:** 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.

**Findings of Fact:** See Section 448 Above

**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:** This is a municipal project and utilizes resources planned for and as proposed by the municipality.

**Conclusions of Law:** This standard is met.

**B. Traffic on Roads and Highways**

**Findings of Fact:** Standard 448 does allow for applying traffic related zoning provisions. The proposed sidewalk improvements are not anticipated to impact current utilization levels of or flow or traffic. Proposed sidewalks and signage will improve pedestrian safety along the highway.

**Conclusions of Law:** This standard 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:** See Section 448 above

**Conclusions of Law:** Not applicable

**E. Air Quality**

**Findings of Fact:** See Section 448 above

**Conclusion of Law:** Not applicable

**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.”

**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 sidewalk will be designed to maintain the character of the area while providing for pedestrian safety.

**B. Economic Development Contributing to the Character of the Town:** The sidewalk will provide safer accessibility and usage of the downtown village.

**C. Development Consistent with the Rural, Agricultural, and Historic Nature of the Town:** Proposed sidewalk and railing 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

**Findings of Fact:** The proposed use of the sidewalk 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)**

**Findings of Fact:** This application is not involving an historic structure

**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 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:** Lighting has been removed from project.

**Conclusions of Law:** Not Applicable

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

**Findings of Fact:** See Section 448

**Conclusions of Law:** Not Applicable

**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:** This provision is included within the scope of permissible zoning restrictions allowable under Section 448. Traffic and pedestrian safety considerations for this projection include: Traffic flow be subject to lane closures when necessary. Traffic will be restricted to one lane at times through the project. Property owners will have access to driveweays at all times. Flaggers will be used throughout project for pedestrian safety.

**Conclusions of Law:** Traffic and pedestrian safety has been duly considered in the proposed development. This standard 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:** While off-street parking is a permissible standard under Section 448, the proposed development does not impact off-street parking.

**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:** See Section 448

**Conclusions of Law:** 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:** Section 448 does allow for applying zoning standards for Landscaping and Screening to Community Facility Development. Proposed Landscaping and Screening includes grass buffer zone at the east end of property.

**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:** See Section 448

**Conclusions of Law:** Not applicable

**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:** See Section 448

**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 stormwater detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural or manmade features, and renewable energy sources.

**Findings of Fact:** This provision relates to Landscaping and Screening and is, therefore, allowed under Section 448. The sidewalk will be made of concrete. Railings will be a neutral black which will help it blend with the environment. The sidewalk will not adversely impact the natural resources of the area.

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

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

**Findings of Fact:** See Section 448

**Conclusions of Law:** Not applicable

**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:** See Section 448

**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 hazard area

**Conclusions of Law:** Not applicable.

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

**Findings of Fact:** See Section 448

**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:** 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 Exhibit 8 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. All property easement approvals must be received before project goes out to bid.
3. The construction site shall be managed so as to ensure pedestrian and vehicular safety hazards are avoided during the construction process.
4. Noise will be minimized during construction to so as to not negatively impact neighboring properties between the hours of 8 PM and 8 AM. Sidewalk construction shall not take place before the hours of 8AM or after 8PM.
5. Per testimony, all homeowners landscaping & physical property will be returned to the original

- condition once work is completed.
6. The metal railing shall be powder-coated black to make it visually disappear to the extent possible.
  7. The applicant will work with the state to provide traffic calming methodologies to ensure pedestrian safety against oncoming traffic consistently and in perpetuity on route 9 in the area of the proposed development.
  8. All sidewalks, crosswalks, railings, 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
  9. 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.

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:

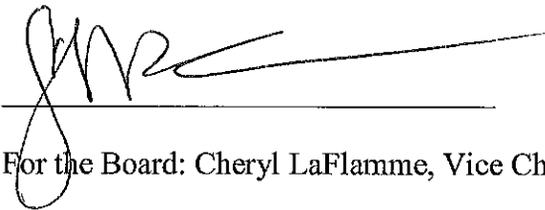
Diane Abate  
Charles Foster  
Fred Houston  
Cheryl LaFlamme  
Paul Lockyear

OPPOSED:

None

ABSTAINING:

None



\_\_\_\_\_

For the Board: Cheryl LaFlamme, Vice Chair

Date: 3/16/2020

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.*