

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: **James Barnes of Hermitage Inn Real Estate Holding Company LLC**

Agent(s) Mailing Address: Robert Rubin, **P.O. Box 2210, West Dover, VT 05356**

Owner/Applicant(s) Mailing Address: **P.O. Box 2210, West Dover, VT 05356**

Address of the subject property: **125 Gatehouse Trail, Wilmington, VT 05363**

Tax Map #**HAYSTACK.SKI**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2013-044

Description of Case per Public Notice:

Application # 2013-044; Owner; Hermitage Inn Realty Estate Holding Company LLC; Agent, Robert Rubin. Application being made for Conditional Use review to amend the Master Plan and construction of a transfer lift, eleven Single-Family Dwellings, a chapel, two mountain cabins (mini restaurants) and two stream withdrawals at an existing ski area; Zoning Ordinance Section 7; location: 125 Gatehouse Trail

Notice for a public hearing was published in the Valley News on: **5/31/2013**

Notice was posted in three public places on: **5/31/2013**

A copy of the notice was mailed to the applicant on: **5/31/2013**

A copy of the notice was mailed to the abutters on: **5/31/2013**

The public hearing was held on: **6/17/2013**

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 Environment Court.

Appeal period for this Case expires on: July 26, 2031

In *addition* to the Applicant / Agent the following persons were heard by the Board in connection with this request: (Copies were mailed to those persons listed below as having been heard.)

Alice Herrick, Zoning Administrator
Laurie Newton, Agent for Mount Snow, Interested Party
Robert Fisher, Witness for Applicant
Robert Harrington, Witness for Applicant
Ben Joyce, Witness for Applicant

I. The Board FINDS:

The following are the circumstances which give rise to the request, and the following are facts and opinions presented to the Board at the hearing and developed by the Board in independent evaluation.

EXHIBITS:

- A Table of Contents
 - B Consulting Affiliates
 - C Section I - Application (nine pages)
 - D Section II – Deeds (two pages)
 - E Section III – Corporate Resolution
 - F Section IV – General Description of Proposed Amendment to Master Plan (three pages)
 - G Section V – Projects for 2013 Construction Season and Summary of Projects Under this Application (two pages)
 - H Section VI – List of Abutting Property Owners [provided by Hermitage] (three pages)
 - I Appendix A – Previous DRB Permit Since 2005
 - J Appendix B – Plan Sheets
 - a. MP-1 Overall Master Plan of Hermitage/Haystack
 - b. MP-1A Upper Mountain Master Plan
 - c. MP-1B Lower Mountain Master Plan
 - d. C2A New England Village Homes Site Layout & Grading Plan
 - e. C3B Kingsley Water & Wastewater Plan
 - f. C3C Mountain Cabins Water & Wastewater Plan
 - g. C4D Lower Mountain Transfer Lift Erosion Control Plan
 - K Town Abutter List
 - L Letter of Authorization from Mount Snow for Laurie Newton, June 17, 2013.
1. The subject property is in the Commercial District of the Town of Wilmington. The property is identified as Tax Map HAYSTACK.SKI.
 2. The Applicant has created a ten-year plan for development of the Base Tract and

surrounding land now owned by the Hermitage Inn Real Estate Holding Company, LLC. These plans, including many of the exhibits in this application are in a book submitted to the Board. It was decided that this book would be referred to as the Updated Master Plan in order to differentiate it from previous master plans.

3. In this application the Applicant is requesting approval for the following projects:
 - A 3000 foot transfer lift
 - Eleven buildings containing a total of 14 dwelling units
 - Chapel
 - Two cabins
 - Two stream withdrawals
4. **The 3000 foot transfer lift** will start from the bottom of the ski area near the Gatehouse. There will be one intermediary drop off. Its uppermost point will be up on the mountain.
5. **The 11 buildings/14 dwelling units** will be located below the base lodge area in a section of the Tract that was previous approved in DRB Case #2012-051 for nine single family dwellings on individually owned lots. These units were never built and the lots were never subdivided. The owners of these proposed units would own only the footprint of the unit and have access to the surrounding common land. Six of the units (labeled B4, H1(2), H1(1), B2(2), H1(3) and B2(1) in Exhibit J (Maps MP-1B and C2A) will be built in 2013 with the remaining eight units constructed in 2014-15. One building shown on Map MP-1B is not going to be constructed. A new road coming off of Gatehouse Road and ending in a cul-de-sac will serve as access to the buildings being built in 2012. The other buildings and the chapel will be accessed by a second road off of Gatehouse Road. This road will also end in a cul-de-sac. Each unit will have a two-car garage with two outside parking spaces. All the buildings will be set back at least 65 feet from the road center line and 40 feet from any road right-of-way.
6. **The chapel** will be located in the same area as the proposed dwelling units on a road that comes off of Gatehouse Road (Exhibit J/Map MP-1B). It will measure approximately 50 feet by 60 feet and seat approximately 100 people. There will be twenty 10 foot by 20 foot parking spaces allocated to the chapel with additional parking along the cul-de-sac. It will be used for special occasions such as weddings. It could also be used for regular services. The center of the cul-de-sac would also be available for outdoor gatherings.
7. **The two mountain cabins** will be located on either side of a ski run at just over 2800 feet in altitude. (Ex. J/ Map MP-1A) The cabins are located on the Glebe Land which is leased from the Town of Wilmington. Both cabins will measure 30 feet by 40 feet. They will both serve as restaurants (seating for 30-40 patrons) and warming huts for skiers, and for private parties. There will be sewer connections to the line that runs from the top of the mountain and either one or two wells will be drilled to supply water. The Applicant has had some discussions with Wilmington Fire Chief Ken

March and it will continue those discussions. It is contemplated that the cabins might be used for overnight stays. All exterior lighting would be down-shielded. Access to the cabins would be on skis or by snow cats. The Applicant was not sure if the cabins would be used on a year round basis.

8. There will be two areas of **stream withdrawals**. The first area is Haystack Brook. There will be a new 16 inch transfer line to Mirror Lake. A 10 foot by 12 foot utility building containing pumps will be constructed. There will be no employees on site but the building will be visited daily. All setbacks for the building will be at least 200 feet from the property lines. The second withdrawal area is the existing Coldbrook withdrawal. Its line to Mirror Lake will be upgraded. There is an existing utility building measuring approximately 8 foot by 12 foot. The water is shared with Mount Snow and subject to State oversight and permits and various agreements with Mount Snow. Agent for Mount Snow Laurie Newton stated that Mount Snow wants to be sure that its usage of the water will not be negatively impacted.
9. The changes proposed in this Application are subject to Act 250 review. Applicant testified the application for that review is just about completed. There will need to be some updating of information regarding traffic, wetlands and growth impact. Other State agencies will be involved in storm-water run-off and wetlands oversight. Very little area of these proposals is in wetland.
10. **Construction trailers** are being used on-site and will be needed for the next 12 to 14 months. These trailers are for day use only and are supplied with electricity and heat but not sewer and water. The main one is about 14 feet by 48 feet and is used as office space and staff areas. At any given time there may be four to five smaller (about 8 feet by 20 feet) trailers used by sub-contractors. The trailers are placed at different locations in the Base Tract depending on the work being done.
11. Agent Bob Rubin submitted a **summary of dwelling units** using the figure of 450 units that had been previously approved by this Board as meeting the density requirements for the Base Tract:

	Previously Approved	Proposed
Hotel	200	200
Condominiums	89	89
Chamoix Village	40	40
Townhouses*	52	30 (single or duplex buildings)
Single Family	9	0
Reserved/Not yet Assigned	60	91
Total	<u>450</u>	<u>450</u>

- “Townhouse” is used here to describe a dwelling unit in which the owner owns only the footprint of the unit and not additional land. However, each unit would have a share in the common land.

12. It was noted by both the Applicant and the Board that a condition in DRB Case #2012-051 regarding a security officer being in place by November 1, 2012 has not been followed. The Applicant stated that a security firm needed to be hired in order to fulfill that condition.
13. DRB Case 2012-051 notes that the lower part of the Base Tract has approximately 100 acres of common land.

II. The Board CONCLUDES:

The Board concludes that although the Application and the Warning state that the request is for eleven single-family dwelling units the correct amount is eleven buildings with a total of fourteen dwelling units.

The Board concludes that the proposed modification to construct fourteen single-family dwelling units in the general area that was most recently approved for nine units on individual lots will not increase the total units in the Base Tract Area beyond the approved 450 units. The Board accepts as accurate the distribution of dwelling units as summarized in Paragraph 11 above.

The Board concludes that all new building construction meets required setbacks.

With regards to the stream withdrawals and the concerns of the Interested Party Mount Snow represented by Agent Laurie Newton, the Board concludes that much, if not all, of the logistics and requirements for water withdrawals is covered by requirements and oversight by various State agencies. These agencies' decisions supercede any made by this Board. They also have the expertise to review the actual withdrawal plans. The State is aware of water agreements between the Haystack and Mount Snow and any objections or concerns of the Interested Party are best filed with the applicable State agencies.

The proposal is requesting approval of a Planned Unit Development. The Board concludes that the original Town approval for this area happened before there was a Planned Unit Development in the Wilmington Zoning Ordinance. However, the Board has reviewed applications for modifications of the Base Tract Area by applying PUD standards.

The temporary trailers are necessary during construction for the on-site workers. Although the trailers will be there a number of months, given the extent of the construction the Board concludes that a longer-than-usual time period is warranted. The trailers are not visible from any public way and will be removed when construction is over.

With regards to the criteria for Conditional Use review, the Board concludes that this proposal *will* conform to the requirements of the Wilmington Zoning Ordinance and the

following standards:

- A. Will the proposed Conditional Use have an undue adverse effect on the capacity of existing or planned community facilities?** The lift will have no effect on community facilities as it will serve the existing ski trails within the existing ski area.
While the 14 dwelling units increases the permitted units in this area by six, the total Base Tract area is still under the 450 permitted units.
The chapel will bring in additional people to the Base Tract for events but since the number of people is limited by the size and capacity of the building, there will be little impact.
The stream withdrawals will be reviewed by State agencies with more expertise in this subject than this Board but this Board does not believe there to be an undue adverse effect.
The two cabins that are located up on the mountain could present problems for access of Town fire and police personnel. The Applicant will need to work with the local departments to mitigate these problems. No specific information was given regarding overnight stays and the Board would need more specific information before any overnight stays could be approved. The Board concludes that the lack of a security force on site that was required as Condition 10 in Case #2012-051 does have an adverse effect on the local police and fire departments, especially with the construction and use of the mountain cabins. This should be corrected as soon as possible by the hiring of an on-site security force.
- B. Will the proposed Conditional Use have an undue adverse effect on traffic on roads and highways in the vicinity?** Neither the lift nor the stream withdrawals will have any effect on traffic.
The proposed dwelling units will create a small amount of traffic but these units have already been considered in the previously permitted 450 dwelling units.
The chapel and the mountain cabins will generate some additional traffic but the size of the chapel and the cabins limit that impact. The Board also concludes that some of the people attending events at the buildings would likely already be on site and that will reduce the impact on roads in the vicinity.
- C. Will the proposed Conditional Use have an undue adverse effect on the character of the area, as defined by the purpose or purposes of the zoning district within which the project is located?** This area has been recognized for decades as an area of concentrated resort development. The proposed modifications are all consistent with a resort area.
- D. Will the proposed Conditional Use comply with specifically stated policies and standards of the Town Plan?** Yes. The Plan has long recognized the Base Tract Area in its policies and standards.
- E. Will the proposed Conditional Use comply with other sections of the Zoning Bylaw?** Although some of the Base Tract Area is located in the Flood Hazard

Area, the dwelling units, chapel and mountain cabins are not and, therefore, are not subject to review. The stream withdrawals will be reviewed by State agencies.

III. CONDITIONS for Conditional Use:

This is granted subject to the following restrictions, requirements, limitations or specifications.

1. Condition 11 in DRB Case #2012-051 stated that, "There shall be at least one security officer on-site during the evening and night starting no later than November 15, 2012. As further construction occurs, a larger security force shall be employed. Before the opening of the base lodge there shall be an agreement between the Wilmington Police Department and the Applicant regarding the private security force." This Condition stands. In addition, neither of the two mountain cabins shall be open for private or public functions unless there is a security force at the Base Tract.
2. All the proposed buildings (11 townhouse buildings, chapel and two mountain cabins) shall be at least 65 feet from any road centerline.
3. All proposed dwelling unit buildings shall have at least two 10 foot by 20 foot parking spaces in front of the unit for specific use of that unit. These spaces shall be maintained and cleared year round.
4. There shall be at least twenty 10 foot by 20 foot parking spaces adjoining the chapel. These spaces shall be maintained and cleared year round and shall be available for use of those attending events at the chapel.
5. All exterior lighting on the two mountain cabins shall be down-shielded and shall not be turned on except when there is a specific night-time function at the cabin(s).
6. There shall be no overnight stays at either cabin without further application to this Board.
7. Both the Wilmington Fire Chief and the Wilmington Police Chief shall be involved in the safety plans for the mountain cabins and shall sign off on those plans. These plans shall include but shall not be limited to fire-fighting equipment at the cabins and emergency procedures and access to the cabins.
8. Temporary trailers shall be used as office and staff space for the on-site construction staff. There shall be no overnight use of any trailer. All trailers shall be removed within 30 days of construction completion.
9. All applicable conditions from previous cases are still in force.

10. All modifications proposed in this Application shall be substantially constructed as presented in terms of size, location and use.

Thus, the Development Review Board *does* **approve** the application for modification of a **development in the Commercial District to allow construction of:**

- **Eleven buildings containing 14 single dwelling units with additional roads**
- **Chapel with additional roads**
- **Two mountain cabins**
- **Ski lift**
- **Construction and/or up-grading of two stream withdrawals including a pump house**

Thus, the Development Review Board does **approve** the application for **Conditional Use review in the Commercial District to allow commencement of the modifications listed above . If unused, this Approval expires 3 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.

IN FAVOR of granting the APPROVAL FOR the above referenced application, with whatever restrictions, requirements, limitations or specifications are contained herein:

Nicki (Polly) Steel
Andrew Schindel
Gil Oxley
Frank Sprague

OPPOSED:
None

For the Board: Polly Steel, Chairperson

Date: 6/26/2013

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.