

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: **24 Main Street Wilmington, LLC**  
Owner/Applicant(s) Mailing Address: 10 Gatehouse Trail, Wilmington, VT 05363  
Address of the subject property: 24 West Main Street  
Tax Map: # **020-20-078.000**

A copy of the request is filed in the office of the Board and is referred to as: **Case #2017-002**

**Description of Case per Public Notice:**

Application #2017-002: Owner: 24 Main Street Wilmington, LLC. Agent Bob Rubin, Application is being made for a Conditional Use review to allow a service business. Village Zoning district (Historic Review District) & Flood Hazard District. Sections 450 B, 610, 710 & 721: Location: 24 West Main Street.

Notice for a public hearing was published in the Valley News on: **January 19, 2017**

Notice was posted in three public places on: **January 19,, 2017**

A copy of the notice was mailed to the applicant on: **January 18, 2017**

A copy of the notice was mailed to the abutters on: **January 18, 2017**

A public hearing was held on February 6, 2017  
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: April 6, 2017**

**Approval expires on: March 6, 2019**

In *addition* to the Applicant/Agent the following persons, the following presented testimony on behalf of the Applicant or an Interested Person:

None

### **EXHIBITS**

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

1. Application including Abutters List
2. Consisting of Sheets 1-16 with Sheet 1 being an interior plan the remaining sheets showing potential “show room” interiors.
3. Written outline of testimony of Robert Rubin, agent of the applicant.
4. Copy of DRB decision in Case #2011-077 which is a prior case governing the property.

### **SYNOPSIS**

The applicant proposes to renovate the interior of an existing building within the Historic Design Review District for the purpose of a interior design business with some incidental retail sale of furniture requiring a change of use from “Office” to “Service Business”. No exterior changes are sought.

### **APPLICABLE DISTRICT**

**Finding of Fact:** Subject property is identified as Tax Map: #020-20-078.000 and has an address of 24 West Main Street

**Conclusions of Law:** The proposed development lies within the Historic Design Review District of the Village District and will be reviewed under Article IV Section 450 B and Article V.

### **USES**

**Findings of Fact:** The immediate past use of the premises was as a Real Estate office. The use sought is an interior design business with display areas. Some sales of furniture from the premises are anticipated but only of a minor nature. Exhibits 1 & 3

**Conclusions of Law:** An interior design business is a “service business” and a Conditional Use under Section 450 B 4. A “service business” may include incidental retail sales as a minor portion of the business. See definition of “Service Business” Article X. The application shall be reviewed under Sections 710, 721, 722, 723 and 730.

### **DIMENSIONAL REQUIREMENTS**

**Findings of Fact:** No changes are being made to the footprint or height of the structure

**Conclusions of Law:** Not applicable

### **ARTICLE V HISTORIC DESIGN REVIEW DISTRICT**

**Section 560: Sight Plan and Design Review Standards**

- A. All development and land improvements within the Historic Design Review District are subject to the Standards as defined in Article VII as well as any applicable standards as set forth in Article VI Flood Hazard Area, Article VIII Signs, and Article IX Telecommunications.
- B. All development and land improvements within the Historic Design Review District shall conform to the Site Plan and Design Guidelines of Appendix I to the extent reasonable and possible to satisfy the intent of this ordinance and preserve, rehabilitate or restore the historic structures of the town as defined in Sections 730, 731 and 732 of this ordinance.

**Findings of Fact:** No external changes are proposed for the structure or grounds. The sole physical changes are for the interior space. A change of use is sought.

**Conclusions of Law:** The application will be reviewed under Sections 710, 721, 722, 723 and 730.

## **ARTICLE VI FLOOD HAZARD DISTRICT**

### **Section 602: Lands to which these regulations apply**

- A. These regulations apply for development in all areas of the Town of Wilmington identified as areas of special flood hazard in and on the most current flood insurance studies and maps published by the Dept. of Homeland Security (DHS), FEMA. National Flood Insurance Program, as provided by the Agency of Natural Resources pursuant to 10 VSA 753
- B. The base flood elevations and floodway limits (zones A1-A30, AE and AH) provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer the provisions of these regulations.

**Findings of Fact:** The property lies within the Floodway Fringe as defined. It has an existing structure which is shown in Appendix II as listed on the National and State Register of Historic Places. The property was reviewed and approved for reconstruction and renovation in 2011 in Case # 2011-077. Exhibit 4. The interior changes will not preclude the structure's continued designation as an "historic structure".

**Conclusions of Law:** The application will be reviewed under so much of Article VI as applicable.

### **Section 605: Permitted Uses**

The following open space uses shall be permitted within flood hazard areas to the extent that they are not prohibited by any other ordinance or regulation and provided that they do not require the erection of structures, storage of materials and equipment, importing fill from outside the flood hazard area, do not obstruct flood flows and will not increase the flood level within the floodway during the occurrence of the base flood or increase off-site damage potential.

- A. Agricultural uses, such as general farming, pasture, orchard, grazing, outdoor plant nurseries, truck farming and forestry.
- B. Recreational uses, such as parks, campsites, picnic grounds, golf courses and boat launching sites.
- C. Residential uses, such as lawns, gardens, unpaved areas and play areas.

**Findings of Fact:** The applicant seeks a change of use from an “office” to a “service business”.

**Conclusions of Law:** A “service business” is not a permitted use in a flood hazard area but is a conditional use under Section 606 and will be reviewed as such.

**Section 610: Development Standards**

Before a permit may be granted, the Development Review Board shall require the following standards:

A. Floodway Fringe Areas (i.e., special flood hazard areas outside of the floodway)

1. All Development

- All development shall be reasonably safe from flooding and:

- (a) designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood,
- (b) constructed with materials resistant to flood damage,
- (c) constructed by methods and practices that minimize flood damage, and
- (d) constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding

**Findings of Fact:** The structure was reviewed and approved for reconstruction and renovation in 2011 in Case # 2011-077. No changes to the location of the electrical panel or heating system are contemplated. No external modifications to the structure are proposed.

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

B. Non-Residential Development:

- (a) New construction and existing buildings to be substantially improved shall have the lowest floor, including basement, elevated to or above the base flood elevation or together with attendant utility and sanitary facilities be designed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- (b) A permit for a building proposed to be floodproofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.

**Findings of Fact:** The existing structure will have interior renovations only. These renovations will not affect the structure’s listing on the National or State Register of Historic Places.

**Conclusions of Law:** The renovations are not a “substantial improvement” as defined in Section 620. This standard is not applicable.

**ARTICLE VII STANDARDS**

**Section 710: Use Performance Standards**

Pursuant to 24 V.S.A. § 4414(5) Performance Standards, the following standards shall apply to all uses and land development in the town.

- A. Vibration: No permanent, ongoing vibration shall be produced which, when transmitted, is discernible at the property line without the aid of instruments.  
Temporary vibration created during land development should be limited to daylight hours to preserve quality of life in neighboring properties.

**Findings of Fact:** The use of machinery or other vibration producing equipment is not sought.

**Conclusions of Law:** This standard is not applicable

- B. Noise: continuous, permanent or ongoing noise in excess of that of a normal conversation (in the judgement of the Development Review Board) must not exist at the property boundary line.  
Recurring periodic or intermittent noises in excess of that of a normal lawn mower (in the judgement of the Development Review Board) at the property line is allowed provided it does not occur between the hours of nine (9) PM and seven (7) AM, and does not significantly detract from or diminish other property's allowed use or land development.

**Findings of Fact:** The use sought is as an interior design shop. There will be no noise produced beyond that of a retail store.

**Conclusions of Law:** This standard is not applicable.

- C. Air Emissions for Commercial Operations: There shall be no emission of dust, ash, smoke or other particulate matter:
1. Which can cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity.
  2. Which can cause contamination of the subject property or beyond the property boundaries.
  3. Which is composed of solid or liquid particles in concentrations exceeding current state authority standards.
  4. Which causes emission of non-farming, odorous matter in such quantities, as determined to be offensive.

**Findings of Fact:** The heating system is propane which produces negligible emissions.

**Conclusions of Law:** This standard 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 may cause injury or damage to human or animal health, vegetation, or property.

**Findings of Fact:** No such operations will be conducted on the premises.

**Conclusions of Law:** This standard is satisfied

**Section 721: Conditional Use – General Standards**

In all districts, all Conditional Use development shall protect from undue adverse effects. No Land Development or use shall result in an undue adverse effect on any of the following:

A. The capacity of existing or planned community, municipal or educational facilities;

**Findings of Fact:** There will be three employees which do not exceed the normal number of employees for a real estate office of similar size.

**Conclusions of Law:** This standard is satisfied

B. Impact on traffic, roads, highways, transportation systems, pedestrian walkways in the vicinity;

**Findings of Fact:** The structure on the property is being repurposed to a service business within an existing structure in the Historic District. No changes in traffic, roads or walkways will take place..

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

C. By-laws and ordinances in effect at the time;

**Findings of Fact:** Not applicable.

D. Utilization of renewable energy resources;

**Findings of Fact:** No installation of renewable energy resources are sought for the structure.

**Conclusions of Law:** Not applicable

E. Air quality;

**Findings of Fact:** See Section 710 C above.

F. The character, aesthetics, and scenic value of the neighborhood and area affected, as defined by the purpose or purposes of the zoning district within which the project is located and specifically stated policies and standards of this ordinance and the Town Plan..

**Findings of Fact:** The purpose of the Village District is to retain the character of the existing village through historically appropriate structures and business types. There is to be no external change to the structure or property.

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

**Section 722: Conditional Use – Preserving the Character of the Town**

Land development and uses in all Districts shall preserve the character of the town consistent with its rural and agricultural heritage, conforming to the following:

**A. Preservation of the Town’s Character:**

**Findings of Fact:** There will be no change to the external structure of the existing building or to any of the surrounding property. Trash will be removed by the Hermitage Club Maintenance Department removing the requirement of a dumpster.

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

**B. Economic Development Contributing to the Character of the Town:** Will not detract from the historic character and nature of the town as a family destination for tourists and a family focused residential community.

**Findings of Fact:** The design center will cater primarily to Hermitage Club members but will be available to others. The structure will have no exterior changes.

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

**C. Development Consistent with the Rural, Agricultural and Historic Nature of the Town**

**Findings of Fact:** See Section 721 F above.

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

**D. Formula Businesses:** Visual appearance shall harmonize – See Appendix I

**Findings of Fact:** Not applicable.

**E. Maximum Square Footage for Retail:** Exceeding 2000 square feet if:

1. Consistent with the character and ambiance of the community
2. In the best interest of the community
3. Is the minimum size required to reasonably accommodate the business
4. Enhance or preserve the economic base and economic diversity

5. create economic stability and viability

**Findings of Fact:** Not applicable

**F. Building Scale Conformity:** Conform to the scale of the established neighborhood.

**Findings of Fact:** There are no exterior changes to the pre-existing structure or changes to the surrounding property.

**Conclusions of Law:** This condition is satisfied

**G. Utility Placement:**

**Findings of Fact:** No changes in the preexisting utility service are contemplated.

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

**Section 723: Conditional Use- Preserving the Character of the Town: Historic Preservation**  
Required within Historic Design Review District – See Art V

**Findings of Fact:** The structure is listed in Appendix II as a structure listed on the National or State Register of Historic Places. All structural changes are interior and will not affect the historic nature of the building.

**Conclusions of Law:** The conditions of this section are satisfied.

**Section 730: Conditional Use – Specific Standards**

**A. Lighting and Glare:** Lighting in the Historic Design Review District and Village District shall be in keeping with the historic character. All exterior lighting shall be shielded and downcast. Interior and exterior lighting glare or reflections are prohibited if they:

1. Constitute a unreasonable nuisance;
2. Are found not to contribute to the aesthetics, scenic value or character of the area and community;
3. Found to impair the vision of pedestrians or the driver of a motor vehicle or an aircraft.

**Findings of Fact:** Exterior lighting will be shielded and downcast and in keeping with the Historic District. The lighting in the parking lot was approved in Case #: 2011-077

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

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

**Findings of Fact:** As no external changes are sought, safety hazards will be at a minimum. Normal precautions will be taken for the interior renovations.



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

**C. Traffic and Pedestrian Safety:** Development shall provide for 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 traffic flow and efficiency.

**Findings of Fact:** There are no changes proposed

**Conclusions of Law:** This condition is satisfied,

**D. Road Development:** New roads, public and private, shall conform to the town's Highway Ordinance.

**Findings of Fact:** There are no roads proposed.

**Conclusions of Law:** Not applicable.

**E. Landscaping, Screening and Buffer Areas:**

1. Landscaping
2. Screening & Buffer Areas: See By Law

**Findings of Fact:** Current landscaping is to be maintained. Brick pavers are proposed between the sidewalk and the building.

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

**F. Land and Water Management:** Protect properties, transportation systems, and public safety by 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
- d. preserving and promoting scenic or aesthetic features and open spaces

**Findings of Fact:** The proposal is in the Village District and no changes to the structure are sought.

**Conclusions of Law:** Not applicable

**H. 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:** Not applicable

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

**Findings of Fact:** Not applicable

**J. Shoreland Protection:** Shall be in conformity with the Shoreland Protection act – within 250 feet of a body of water equal to or greater than 10 acres

**Findings of Fact:** Not applicable.

**K. Flood Hazard Protection:** Development must comply with the provisions of Article VI Flood Hazard District

**Findings of Fact:** See Findings and Conclusions on Article VI above

### **Section 732: Conditional Use – Other Specific Standards**

#### **F. Commercial Parking and Unloading Areas:**

**Findings of Fact:** The project is in the Historic Design Review District which has no required parking. Parking is located in the lot behind the structure.

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

### **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. Any changes to the plans will require an administrative approval from the zoning administrator or a review by the Development Review Board, in conformance with the Zoning Ordinance.
2. Pedestrian pathways will be planned and maintained in such a fashion as to provide for maximum pedestrian safety at all times including snow removal and ice management.
3. All outdoor public areas and sidewalks will be lit sufficiently to provide for public safety.

4. All previous conditions continue to apply to the property.

The applicant is responsible for obtaining all state and federal permits.

**If unused, this Approval expires two 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:

Tim Hall  
Fred Houston  
Peter Wallace

OPPOSED:

None

ABSTAINING:

None

\_\_\_\_\_

For the Board: Fred Houston, Vice Chairperson

Date: \_\_\_\_\_

Copies of this decision have been mailed to: \_\_\_\_\_

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.*