

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: **Ralph Ruprecht**

Owner/Applicant(s) Mailing Address: **P.O. 514, Dover, VT 05363**
Address of the subject property: **799 Route 100 North, Wilmington, Vt**
Tax Map: # **003-01-075.120**

A copy of the request is filed in the office of the Board and is referred to as: **#2017-035**

Description of Case per Public Notice:

Application is made for a Conditional use review to allow a manufacturing facility (Cutting of timber frames & fabricating insulated panels). Commercial/Residential zoning district. Sections 450(E)4, 710, 721 & 722. Location: 799 Route 100 North

Notice for a public hearing was published in the Valley News on: **June 22, 2017**

Notice was posted in three public places on: **June 22, 2017**

A copy of the notice was mailed to the applicant on: **June 22, 2017**

A copy of the notice was mailed to the abutters on: **June22, 2017**

A public hearing were held on **July 10, 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: August 28, 2017

Approval expires on: July 28, 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 amended to reflect the property address of 799 Vermont Route 100 North.
2. Aerial Map from Vermont Natural Resources Atlas, Vermont Agency of Natural Resources dated June 13, 2017 with a property line overlay showing, among other properties, 799 Vermont Route 100 North.
3. Photograph of the woodworking machine
- 3A Information dealing with insulated panels.
4. Federal Emergency Management Agency, Letter of Map Revision based on Fill Determination Document (Removal), hereinafter “LOMA”, dated September 16, 2008 removing the structure at 799 Vermont Route 100 North from the Special Flood Hazard Area.
5. Aerial Map from Vermont Natural Resources Atlas, Vermont Agency of Natural Resources dated June 13, 2017 with an overlay showing the Special Flood Hazard Area prior to the Letter of Map Revision (Exhibit 4).
6. Proposed light fixtures – floods and gooseneck.

SYNOPSIS

The applicant proposes to manufacture timber frames for timber frame buildings. The process includes notching and cutting to length pre-barked and squared timbers for assembly on building sites throughout New England. The request for a decision on the fabrication of insulating panels was withdrawn. A later request for this activity may be forthcoming.

APPLICABLE DISTRICT

Findings of Fact: Subject property is identified as Tax Map: #003-01-075.120 and has an address of 799 Route 100 North

Conclusions of Law: The proposed development lies in the Commercial/Residential District and will be reviewed under Article IV Section 450E.

USES

Findings of Fact: The premises is presently being used as a storage facility, a Conditional Use in the Commercial/Residential District. The proposed use of Manufacturing is also a Conditional Use in the District. Section 450E4

Conclusions of Law: The application will be reviewed under the applicable provisions of Sections 710, 721, 722, 730 and 732F

DIMENSIONAL REQUIREMENTS

Findings of Fact: The structure pre-exists and will not be modified

Conclusions of Law: Not applicable

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: While a portion of the premises had been in the special flood hazard area, the portions of the property that are to be used for manufacturing and the storage of materials have been removed from this area by the LOMA. Parking on the easterly side of the parking area does remain within the special flood hazard area. Exhibits 4 and 5.

Conclusions of Law: 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 agent of the applicant, Rob Wadsworth, testified that there would be no vibration from the process discernible at the property line.

Conclusions of Law: This condition is satisfied.

- 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 interior of the present storage building will be insulated to reduce noise and preserve heat. There will be a portable gas powered band saw that will have occasional exterior use. This saw produces not more noise than a portable wood splitter. Hours of operation will be, at longest, 7 AM to 7 PM. Testimony of Rob Wadsworth.

Conclusions of Law: This condition is satisfied

- 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 particulate matter produced will be saw dust and wood smoke from the heating system. Aerial saw dust will be collected by an interior air filtration system. All saw dust will be collected and cached for later disposal. None of the emissions will violate #1-4 of this section. Testimony of Rob Wadsworth.

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 may cause injury or damage to human or animal health, vegetation, or property.

Findings of Fact: No injurious or noxious practices as set out above will take place on the premises. Testimony of Rob Wadsworth.

Conclusions of Law: This condition 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: It is anticipated that 2 to 12 persons will be employed at the premises. These individuals will come from the local area. The building is pre-existing and requires minor modifications none of which will tax planned community, municipal or educational facilities. Testimony of Rob Wadsworth. There will be no undue adverse effect

Conclusions of Law: This condition is satisfied.

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

Findings of Fact: There will normally be one large timber delivery truck in and a similar one out for each timber frame building. No more than one per week is anticipated. Testimony of Rob Wadsworth. There will be no undue adverse effect.

Conclusions of Law: This condition is satisfied

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

Findings of Fact: Not applicable

Conclusions of Law: Not applicable

D. Utilization of renewable energy resources;

Findings of Fact: It is proposed to utilize scrap wood from the manufacturing process in a wood heating plant to heat the premises.

Conclusions of Law: This condition is satisfied

E. Air quality – See Findings and Conclusions in 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 structure to be utilized is a pre-existing storage building in a densely developed commercial area. It is located behind another commercial structure and is approximately 300 feet from Route 100 North. The purpose of the Commercial/Residential district is to “encourage clustered economic development while preserving designated open spaces and historic village settlement patterns” which this proposal does. Exhibit 2

Conclusions of Law: This condition 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: Business development shall, to the extent reasonable and possible, occur in a manner that preserves the rural and agricultural character and ambiance of the community and the historic downtown.

Findings of Fact: The project utilizes a pre-existing building in a long developed commercial section on the commercial corridor of Route 100 North. Timber frames are proposed to be manufactured. The facade of the pre-existing building will be modified to reflect a timber frame. Testimony of Rob Wadsworth, Application and Exhibit 2

Conclusions of Law: This condition is satisfied.

B. Economic Development Contributing to the Character of the Town: Merchandise or services shall 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 product proposed to be manufactured are timber frames for utilization in buildings. Timber frame construction is a historic means of construction utilizing wood products

that were, in the past, locally produced. It is proposed to be produced in a pre-existing building in a heavily commercial area that is presently used for storage. The building is some 300 feet from Route 100 North. Exhibit 2.

Conclusions of Law: This condition is satisfied.

C. Development Consistent with the Rural, Agricultural and Historic Nature of the Town: Construction, reconstruction, or land development, whether allowed, Permitted or Conditional shall, to the extent possible, reflect and/or compliment the historic nature of the town and the rural and agricultural appearance of the neighborhood and region.

Findings of Fact: The structure is pre-existing and is not being modified.

Conclusions of Law: Not applicable.

D. Formula Businesses: The visual appearance of Formula Businesses (see Article X for a complete definition), including signage, shall project an appearance harmonious with the character of the rural, agricultural and historic nature of the town, reflection the distinctive and unique character of the town, consistent with the Site Plan and Design Guidelines of Appendix I.

Findings of Fact: The project is not a “Formula Business”

Conclusions of Law: Not applicable

E. Maximum Square Footage for Retail: Retail stores exceeding two thousand (2000) square feet may be approved by the Development Review Board in the event that the business:

1. is Consistent with the character and ambiance of the community
2. is found to be in the best interest of the community
3. is the minimum size required to reasonably accommodate the business
4. will enhance or preserve the economic base and economic diversity of the town as a whole
5. will create economic stability and viability for the community.

Findings of Fact: The business is not retail.

Conclusions of Law: Not applicable

F. Building Scale Conformity: Development shall conform to the scale of the established neighborhood.

Findings of Fact: Building pre-exists

Conclusions of Law: Not applicable.

G. Utility Placement: to preserve the aesthetics and natural beauty of the area, underground utilities are encouraged where possible, particularly in areas of natural scenic beauty and in the Historic Design Review District.

Findings of Fact: Building and utility placement pre-exist in a heavily commercial area.

Conclusions of Law: Not applicable

Section 730: Conditional Use – Specific Standards

All land development and uses in all Districts and Overlay Districts shall conform to the following:

A. Lighting and Glare: Lighting in the Historic Design Review District and Village District shall be in keeping with the historic character of the commercial area of the village. All exterior lighting in all districts shall be shielded and downcast. Interior and exterior lighting, glare or reflection 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 impair the vision of pedestrians or the driver of a motor vehicle or an aircraft..

Findings of Fact: There will be corner building flood lighting and goose neck lighting over the doorways on the gable ends. The lighting will be shielded and downcast with the flood lighting motion sensitive. The building is approximately 300 feet from Route 100 North and is located in a heavily commercial area. Testimony of Rob Wadsworth and Exhibits 2 & 6.

Conclusions of Law: This condition is satisfied

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

Findings of Fact: All OSHA requirements shall be met. Sawdust and other wood detritus will be collected by device within the building and deposited into a trailer located outside the structure. Sawdust from the exterior band saw will be collected and also placed in the trailer. The trailer will be emptied regularly offsite. The State of Vermont Fire Marshal, Brian Johnson, has not required a fire suppression system. Testimony of Rob Wadsworth.

Conclusions of Law: This condition 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: This is a densely developed commercial area. No pedestrian or bicycle traffic is anticipated.

Conclusions of Law: Not applicable.

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

Findings of Fact: No new roads are proposed.

Conclusions of Law: Not applicable.

E. Landscaping, Screening and Buffer Areas: As defined in Section 722(A) development shall "preserve the rural and agricultural character and ambiance of the community". Natural features characteristic of the town's rural and agricultural character shall be used in Landscaping and Screening to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

Findings of Fact: The premises is located in a densely developed commercial area and is 300 feet from Route 100 North. The building is preexisting and is located behind another commercial building. Exhibit 2 Rob Wadsworth testified that they wished to clean up the area and plant vegetation at the entrance.

Conclusions of Law: Given the dense commercial nature of the area and its distance from public roadways, no landscaping or buffer areas are required beyond what was testified to.

F. Land and Water Management: Pursuant to 24 V.S.A. Section 4414(1)(G) and 24 V.S.A. Section 4414(9) the development plan shall protect properties, transportation systems and public safety by:

- a. Providing for safe and appropriate water management including but not limited to water supply quality/availability, storm water retention/absorption, and impervious surface runoff management.
- b. Preventing and controlling against water pollution
- c. Making appropriate provision for management of erosion, preservation of rivers & streams, river/stream banks wetlands, waterways, channels, and agricultural lands.
- d. Preserving and promoting scenic or aesthetic features and open spaces

Findings of Fact: There is approximately 150 feet between the eve of the pre-existing building and the Deerfield River. Though the land slopes gradually downward to the river, it is vegetated and will remain so. The parking area to the south of the building is of an impervious material. The applicant testified that additional plantings would be made should erosion become an issue. The storage building has been in existence and use for some time and no runoff or other water issues have arisen. Testimony of Rob Wadsworth, Exhibit 2.

Conclusions of Law: This condition is satisfied.

G. Wastewater and Potable Water: Pursuant to 24 V.S.A. Section 4414 (13), the Zoning Administrator may issue an initial Permit conditioned upon receipt of evidence of a wastewater and potable water supply Permit, if none is provided with the submitted application. A final Permit may be issued by the Zoning Administrator after receiving evidence that a Permit has been issued, as applicable, under chapter 64 Title 10. Development Review Board decisions shall instruct the applicant of their responsibility in obtaining state and federal Permits and may condition their decision on obtaining such a Permit if none has been obtained.

Findings of Fact: The manufacturing process will employ 2 to 12 persons. Application is being made to the Agency of Natural Resources for a permit for septic disposal. Testimony of Rob Wadsworth.

Conclusions of Law: This decision shall be conditional on obtaining the necessary septic disposal permit from the appropriate state agency.

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: The commercial development on the premises is pre-existing. Existing vegetation will be maintained along the westerly/river side with no clearing to take place without approval of the Vermont Department of Natural Resources. Testimony of Rob Wadsworth

Conclusions of Law: This condition is satisfied.

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

Findings of Fact: The property is in a dense commercial area and has been for some time. There are no wildlife corridors or habitats. Exhibit 2

Conclusions of Law: This condition is satisfied.

J. Shoreland Protection: Pursuant to 24 V.S.A. Section 441 (13) all development shall be in conformity with the Shoreland Protection Act (applying to all development within 250 feet of a body of water greater than or equal to 10 acres)

Findings of Fact: The premises are not “shoreline” as defined in 24 V.S.A Section 4414.

Conclusions of Law: Not applicable.

K. Flood Hazard Protection: Development must comply with the provisions of Article VI Flood Hazard District, if applicable. All floatables in any district and in an area which has historically flooded and all Flood Fringe Areas, shall be raised above the estimated Base Flood Elevation (BFE) or firmly secured so as to ensure they are not dislodged in the event of a flood. This includes but is not limited to propane, oil, and gas tanks, chemicals, explosives, flammable liquids, toxic or hazardous materials. (See Flood Hazard Regulations Section 620 (B) (12)). While hay bales and logs are protected Agricultural and Silviculture industries in Vermont, conformity with this provision is encouraged.

Findings of Fact: The primary materials to be utilized in the applicant's manufacturing process are logs, a product of the protected Silviculture industry, that have been squared but need final preparation and notching. These are to be stored undercover in the easterly portion of the building. This is the side that is closest to the North Branch of the Deerfield River. Exhibit 2 and Testimony of Rob Wadsworth. The LOMA (Exhibit 4) removes the building from the Special Flood Hazard Area. Exhibit 5, however, shows that the easterly portion of the parking area still remains within this area. Testimony from Rob Wadsworth stated that only one building's worth of material was on the premises at any one time. Material was not stockpiled. He further testified that all materials and vehicles stored in the flood hazard area and on the exterior of the structure but within the LOMA area will be removed to higher ground in the event there is a forecast risk of flooding.

Conclusions of Law: This condition will be satisfied upon compliance with a condition as hereinafter specified.

L. Technical Review Costs: DRB may require applicant pay reasonable technical review costs.

Findings of Fact: No technical review is required.

Conclusions of Law: This condition is satisfied.

Section 732: Conditional Use – Other Specific Standards

F. Commercial Parking and Loading Areas: Pursuant to 24 V.S.A. Section 4414 (4) All commercial parking and loading areas in all districts in the town shall adhere to the following standards:

2. Size of Parking Spaces: Parking space size shall be a minimum of ten (10) feet by eighteen (18) feet.
3. Minimum Number of Spaces: The minimum number of required spaces are:
 - vi. Manufacturing: One (1) parking space per employee per shift.

Findings of Fact: It is expected that there will be no more than 12 employees on any one shift requiring 12 parking spaces. Testimony of Rob Wadsworth. There is an area southerly of the south gable end which is presently used for delivery and parking. This area is approximately 150 feet by 110 feet. Exhibit 2. Materials will enter from the right of way and off load on the easterly side of the premises. Completed fabrications will be removed in a similar fashion. Testimony of Rob

Wadsworth.

Conclusions of Law: There is sufficient area for parking and loading.

5. Minimize the Visual Impact of Parking & Loading Areas
6. Buffer Area to Parking.

Findings of Fact: The lot is approximately 600 feet long from north to south and approximately 260 feet wide at its' southerly end. Exhibit 2. The loading area and parking of 12 cars will be in the southerly third and will not need minimization of visual impact or buffer areas in this highly developed commercial zone.

Conclusions of Law: These conditions are satisfied.

7. Public Road Access:

Findings of Fact:

Access to the premises is from Vermont Route 100 by a private right-of-way of sufficient width for the purpose of moving tractor trailer loads of material. It is expected to have no more than one tractor trailer load of material each week. The turning radius onto Vermont Route 100 is sufficient for the size of vehicle anticipated. Testimony of Rob Wadsworth.

Conclusions of Law: This condition is satisfied.

8. Rainwater, Snow and Ice Removal/Storage:

Findings of Fact: See **Findings** in Section 730 F as to rainwater. Snow will be removed to the east and west side of the parking lot as necessary. Areas will be sanded should ice become an issue. Testimony of Rob Wadsworth.

Conclusions of Law: This condition is satisfied.

9. Safety:

Findings of Fact: There is sufficient visibility north and south on Vermont Route 100 from the intersection of the private right-of-way to allow safe entry from and onto the highway. Exhibit 2. Emergency vehicles will use the right-of-way which is more than sufficient for fire and rescue. The fire department has raised no objections. Testimony of Rob Wadsworth. As this is a heavily developed commercial area, pedestrian traffic is not anticipated.

Conclusions of Law: This condition is satisfied.

10. Neighboring Properties:

Findings of Fact: This is a heavily developed commercial area that has been in use for some time. No issues with neighboring properties have arisen.

Conclusions of Law: This condition is satisfied.

The application for development is **approved** with the following conditions, restrictions, requirements, limitations and specifications:

CONDITIONS:

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. There shall be no significant air emissions of dust, ash, smoke or other particulate matter. Dust collection within the Woodworking shop shall be maintained and in good repair to effectively remove dust particulates so as to not be released into air emissions. The outside trailer with saw dust collection will be emptied regularly off premise to minimize fire safety risk.
3. There shall be no permanent or ongoing vibrations created that can be perceived at the property line.
4. There shall be no ongoing or permanent noise created that, at the property line, is louder than a normal conversation.
5. Vegetation shall be maintained along the river bank.
6. No further construction shall take place easterly of the present parking shown on Exhibit 2
7. All materials either awaiting processing or awaiting removal to a building site shall either be stored above the estimated Base Flood Elevation (BFE), secured so as to ensure that they are not dislodged in the event of a flood or removed upon general notice of a potential flood event.
8. Vehicles parked on the premises shall be removed to a place above the BFE upon general notice of a potential flood event.
9. Manufacturing may not begin until the appropriate toilet facilities for employees are permitted and installed.
10. To minimize night sky illumination, all lighting will be downcast and shielded at the minimum lumens necessary to meet the functional need.

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:

Paul Lockyear
Tim Hall
Fred Houston
Wendy Manners Seaman

OPPOSED:

None

ABSTAINING:

None

For the Board: Wendy Manners Seaman, Chairperson

Date: _____

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.