

**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: **Eugene Gates**

Owner/Applicant(s) Mailing Address:, **PO Box 1071, Wilmington VT 05363**

Agent Mailing Address:

Address of the subject property: **155 Route 100 North**

Tax Map: **#021-20-010**

A copy of the request is filed in the office of the Board and is referred to as: **Application #2019-010**

Date of Application: **6/3/19**

Zoning Ordinance Then in Effect: Adopted **October 9, 2017**

**Description of Case per Public Notice:**

Application #2019-010 :Owner: Eugene Gates

Application is being made for a change of use of the garage to allow a service business (Hair Salon) & land development. Commercial/Residential zoning district. Sections 450 E 4, 710, 720, 721, 722, and 730. Location: 155 Route 100 North.

Notice was posted in three public places on: **May 16, 2019**

A copy of the notice was mailed to the applicant on: **May 17, 2019**

A copy of the notice was mailed to the abutters on: **May 17, 2019**

Public hearing was held on: **June 3rd, 2019**

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: July 18, 2019**

**Approval expires on: June 18, 2021**

In addition to the Applicant, the following persons heard by the Board in connection with this request, were determined by the Board to be "interested persons": None.

Copies of this decision have been mailed to those persons listed below. No additional persons.

### **EXHIBITS**

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

1. Application consisting of 4 pages (Exhibit 1)
2. Plan of the building (Exhibit 2)
3. Aerial view of building (Exhibit 3)

### **SYNOPSIS**

The applicant proposes to move the existing Service Business (Hair Dressing) from its site in the Historic District to the garage of 155 Route 100 North. (See Exhibit 2).

### **APPLICABLE DISTRICT**

**Finding of Fact:** Subject property is identified as Tax Map: 021-20-010 and has an address of 155 Route 100 North.

**Conclusions of Law:** The proposed development is located in the **Commercial/Residential District**.

### **USES**

**Article IV Section 450 (E) 4**

**Conditional Uses, Commercial Residential:**

**(Requiring Development Review Board written decision and approval and a zoning permit)**

1. Affordable Housing Development
2. Agritourism
3. Automotive Service Station & Repair Garage
4. Automotive Services
5. Bank
6. Bar or Lounge
7. Camp Recreational
8. Campground/Recreational Vehicle Park
9. Cemetery
10. Child Care Facility
11. Community Facility
12. Dwelling, multiple family
13. Educational or institutional facility
14. Entertainment, cultural facility
15. Food stand
16. Golf course
17. Group home (more than 8 residents)
18. Health Care Facility
19. Home Industry
20. Kennel

21. Lodging – more than 2 guestrooms
22. Maintenance Facility
23. Manufacturing
24. Mini-Storage Facility
25. Mixed-Use
26. Mobile Home Park (a Planned Unit Development)
27. Multi-Business Center
28. Municipal Transfer Station
29. Municipal Utility or Safety Related Facility
30. Nursing Home/Assisted Living Facility
31. Parking Lot
32. Place of Worship
33. Planned Unit Development (see Definitions)
34. Private Club
35. Quarry Operations-Extraction of Earth Resources
36. Recreation, Indoors
37. Recreation Facility, Outdoor
38. Restaurant
39. Retail Business
40. Service Business
41. Slaughterhouse, Custom Processor
42. Snowmaking Facility
43. Storage Facility
44. Subdivision of Land, more than 5 lots
45. Transportation Center
46. Utility Facility
47. Warehouse
48. Wholesale Business

**Finding of Facts:** Most recently this structure has been a garage attached to a residence. The use will be that of a Hairdressing Salon. (Applicant Testimony)

**Conclusions of Law:** The Use is for a service business and as such requires Development Review Board written decision and approval and a zoning permit.

**Dimensional Requirements:**

**Findings of Fact:** The Applicant seeks a change of use in a portion of the interior of a pre-existing building. No exterior changes are sought. (Applicant Testimony.)

**Conclusions of Law:** Not applicable.

**Article VII Standards**

**Section 710: Use Performance Standards**

**A. Vibration:** No continuous, permanent, ongoing, or frequent vibration that is discernible at the property line.

**Finding of Facts:** There will be no continuous, permanent, ongoing, or frequent vibration on the premises. No machinery is to be utilized such as to create such vibration.

**Conclusions of Law:** Standard 710 A is met. (Applicant testimony.)

**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:** There will be no continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation at the property line. The use does not require the continuous use of machinery. . (Applicant testimony.)

**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

**Finding of Facts:** There will be no emission of dust, ash, smoke or other particulate matter. . (Applicant testimony.)

**Conclusions of Law:** Standard 710 C is met.

**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

**Finding of Facts:** No injurious or noxious practices, as defined, will be conducted on the premises. (Applicant testimony.)

**Conclusions of Law:** Standard 710 D is met.

### **Section 721: General Standards**

The proposed use shall protect against adverse effect on:

#### **A: Community, Municipal or Educational Facilities**

**Findings of Fact:** The proposed Use will have one employee who will come from the local area. (Applicant testimony.)

**Conclusions of Law:** No additional stress will be placed on the Town educational system. The Applicant will meet with Wilmington Police and Fire representatives and address any safety or impact concerns raised by those departments.

#### **B. Traffic on Roads and Highways**

**Findings of Facts:** The proposed site is accessed from Route 100 North. The site is on the edge of the speed 25 mph speed limit. Maximum number of daily patrons is anticipated to be 15 - 20 individuals. (Applicant testimony.)

**Conclusions of Law:** The proposed development will have minimal impact on traffic. Standard 721 B is met.

#### **C: Bylaws and Ordinances in Effect**

**Finding of Facts:** 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 & Natural Resources**

**Findings of Fact:** There is no undue or adverse effect on renewable energy and natural resources.  
**Conclusions of Law:** Standard 721 D is not applicable.

**E. Air Quality**

**Finding of Fact:** See Section 710 C above  
**Conclusion of Law:** Standard 721 E is met.

**F. Character of the Area**

**Findings of Facts:** The anticipated use will not impact the character, aesthetics or scenic value of the neighborhood and complies with the specifically stated policies and standards of the Zoning Ordinance.

**Conclusions of Law:** The proposed development is consistent with the defined purpose of the Commercial/Residential District. Standard 721 F is met.

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

**Finding of Facts:**

**A. Preserving the Town's Character:** The proposal requests a change of use for the garage which is part of the overall building. Proposed Uses are consistent with preserving the character of the town (see above).

**B. Economic Development Contributing to the Character of the Town:** See A above

**C. Development Consistent with the Rural, Agricultural, and Historic Nature of the Town:** The proposed is a change of use to a services business in the garage of the property. No exterior changes are sought.

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

**E. Maximum Square Footage of Retail (2000 square feet) –** Not applicable, not retail.

**F. Building Scale Conformity –** Not applicable, existing building

**G. Utility Placement –** Not applicable

**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 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.

**Findings of Fact:** No additional exterior lighting is sought. (Applicant testimony).

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

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

**Findings of Fact:** The use will comply with all Vermont fire and safety standards. (Applicant testimony).

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

**C. Traffic and Pedestrian Safety:** Pedestrian walkways to ensure safe and efficient navigation by foot or bicycle. Special consideration shall be made for children’s safety. Traffic patterns will be review for safety, ease of flow and efficiency.

**Findings of Fact:** Access to the premises is from the carpark outside the property. No disruption of present traffic flows is sought or within future plans. (Applicant testimony).

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

**D. Commercial Parking and Loading:** Commercial parking and loading areas in all districts shall:

**1. Provide off-street parking** (except in the Historic Design Review District)

**2. Parking spaces shall be 10 x 18** (smaller allowed only if need for added spaces outweighs the risk and public inconvenience of smaller spaces). Special consideration shall be given to safety, pedestrian and disabled persons concerns when smaller spaces are allowed.

**3. Minimum number of spaces:** One (1) parking space for each 200 sq ft. retail.

**4. Drive-up Windows:** no waiting lines in public ROW

**5. Minimize visual impact of parking/loading areas**

**6. Buffer parking areas** if needed for safety or aesthetics

**7. Public Road Access:** minimize traffic interruption, provide for auto and pedestrian safety

**8. Rainwater, Snow, and Ice Removal/Storage:** Plan for snow/ice removal, runoff, safety.

**9. Safety:** Minimize physical hazards, provide safe pedestrian and vehicular movement with un-obscured views, especially visibility at intersections, pedestrian safety, convenience, emergency access.

**10. Neighboring properties:** integrate circulation and parking with neighboring properties. Work to maximize for efficiency, safety, and attractive solutions.

**Finding of Facts:** The applicant does not receive deliveries and will provide three parking spaces for her clientele. (Applicant Testimony.)

**Conclusions of Law:** Standard 732 D is met.

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

**Findings of Fact:** The proposed use does not involve road development.

**Conclusions of Law:** Section 730 E is not applicable

**F. Landscaping, Screening and Development:** Shall “preserve the rural and agricultural character and ambiance of the community”. Natural features characteristic of the town’s rural and agricultural nature shall be preserved. Landscaping and Screening shall be used to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

**Findings of Fact:** Applicant agrees to add additional shrubbery to the extent reasonable with the objective of screening parked cars from the highway while preserving line of sight to rt 100 for ingress and egress to the property (Applicant testimony)

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

**G. Land and Water Management:** Protect properties, transportation systems, and public safety by  
a. 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,

**Findings of Fact:** The proposed change of use in an existing building with municipal water and sewer will not create issues of land and water. (Applicant testimony)

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

**H Wastewater and Potable Water:** A permit may be issued upon receipt of evidence there is a wastewater and potable water permit. If none is received with a submitted application, the Permit will be conditioned on receipt of a wastewater and potable water permit at which time a final Permit will be issued. DRB shall instruct the applicant on their responsibility to obtain state and federal permits and may condition their decision on obtaining such permits.

**Findings of Fact:** The premises is served by the municipal water and sewer service. The applicant has testified that the present water and sewer allocations are sufficient for the proposed use. (Applicant testimony.)

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

**I. Natural Resources and Features:** Existing vegetation, native species, native trees, scenic views, river access and other natural features shall be preserved to the extent possible and to the extent that they will enhance and promote the natural assets of the town. Clearing of land to create pastureland and scenic spaces/vistas is allowed provided it does not have an unreasonable impact on natural resources. Development shall blend with the topography, vegetation, and natural land features. It shall not have an undue adverse impact on natural features, natural resources or renewable energy. This includes no adverse impact on forested lands, streams and stream banks, steep slopes, wetlands, watersheds, floodplains, soil unsuitable for development, impervious surfaces essential to stormwater detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural or manmade features, and renewable energy sources.

**Findings of Fact:** The proposal does not involve any development

**Conclusions of Law:** Not applicable

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

**Findings of Fact:** 6 South Main Street is in the congested downtown area and is not identified on the town Natural Resources Map, Nov 2016 as having any rare or uncommon animals; a significant natural community; a deer wintering area or wildlife habitat.

**Conclusions of Law:** The proposed Use will not have any adverse impact on wildlife habitats or corridor. Standard 730 J is met.

**K. Shoreland Protection:** Compliance with Shoreland Protection Act if development is within 250 feet of a body of water greater than 10 acres.

**Findings of Fact:** Proposed development is not near a body of water.

**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:** 155 Route 100 North is not within the Flood Hazard District

**Conclusions of Law:** Standard 730 I is not applicable.

**M. Energy Resources:** Commercial Development shall comply with the Commercial Building Energy Standards. Residential development shall comply with Vermont Residential Building Energy Standards. 30 V.S.A. (51 & 54)

**Findings of Fact:** There is no construction of any structure. Solely the change of Use of the interior of the premises..

**Conclusions of Law:** Section 730 M is 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:** Section 730 N is not applicable.

**DECISION:**

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

**CONDITONS:**

1. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits, Findings of Fact and Conclusions of Law in this decision. Any changes to the plans will require an administrative approval from the zoning administrator or a review by the Development Review Board as required by the Zoning Ordinance.
2. The Applicant will meet with Wilmington Police and Fire representatives to determine any additional safety requirements.
3. Any sign lighting will be shielded and downcast with the minimum lumens necessary to meet the needs of the lighting purpose of preserving pedestrian and vehicular safety. Lighting shall not generate undue or excessive glare so as to interfere with neighboring properties and will not impede the vision of drivers.
4. All signage shall be approved by the Zoning Administrator prior to installation.
5. There shall be no significant air emissions of dust, ash, smoke or other particulate matter.
6. There shall be no permanent or ongoing vibrations created.
7. There shall be no ongoing or permanent noise created.
8. Applicant agrees to implement a planting initiative with the objective of screening parked cars from the highway while preserving line of sight to rt 100 for ingress and egress to the property

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.

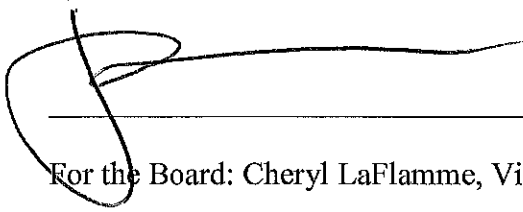
Town of Wilmington, Zoning Administrator reserves the right to monitor compliance with this decision and all decisions issued by the Development Review Board

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

Fred Houston  
Paul Lockyear  
Cheryl LaFlamme  
Wendy Manners Seaman  
Charlie Foster

OPPOSED:  
none

ABSTAINING:  
None



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For the Board: Cheryl LaFlamme, Vice Chairperson

Date: June 18, 2019

Appeal Rights: An interested person may appeal this decision to the Vermont Superior Court, Environmental Division, pursuant to 24 VSA 4471 and VRECP Rule 5, in writing, within 30 days from the date this decision is issued. If you fail to appeal this decision, your right to challenge this decision at some future time may be lost because you waited too long. You will be bound by the decision, pursuant to 24 VSA 4472(d) (exclusivity of remedy; finality).

*This approval does not relieve the Applicant of the responsibility to obtain all other applicable approvals that may be required by Federal, State, and local laws and ordinances.*