

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: **Chrystal and Brian Holt**

Owner/Applicant(s) Mailing Address: 363 Boyd Hill Road, Wilmington VT 05363

Address of the subject property: **123 West Main Street**

Tax Map: # **20-20-037.000**

A copy of the request is filed in the office of the Board and is referred to as: **#2020-012**

Description of Case per Public Notice:

Application # **2020-012** : Owner: Michael Culnen

Application is being made to consider exterior Improvements to the façade of the existing building, including main door expansion and a door addition, concrete ramps to one entrance door and concrete steps to the others, concrete pad on the side of the building, and exhaust vent on the front left side of the roof for this retail use proposal.

Applicable Wilmington Code Section II, IV, VII and VIII

Notice for a public hearing was published in the Valley News on: **4/28/20**

Notice was posted in three public places on: **4/28/20**

A copy of the notice was mailed to the applicant on: **4/30/20**

A copy of the notice was mailed to the abutters on: **4/30/20**

Appeal period for this Case expires on: 6/21/2020

Approval expires on: 5/21/2022

The following presented testimony as the applicant or on behalf of the Applicant or as an Interested Person:

Chrystal and Brian Holt

Michael Culnen

John McLeod

Bob Fisher Esq

EXHIBITS

The following Exhibits were placed in evidence by the Applicant or their Agent:

1. Application
2. Abutter Notice
3. DRB Summary
4. Hearing Notice
5. Sewer appraisal email from John Lazelle
6. Flood testimony from John Broker- Campbell

- A) Front of building
- B) Location of front steps picture
- C) Roaster Manual
- D) Roaster Specs
- E) Roaster Specs 2
- F) Testimonial email from Doug Elliot
- G) DECNC Application
- H) Testimony from Dick Martindale
- I) Duct publication
- J) Duct specifications
- K) Vent location on building & interior diagrams
- L) Exhaust specifications
- M) Coffee station diagram & example
- N) Lighting Diagram & pictures
- O) Signage example & location
- P) Afterburner specs
- Q) Window boxes location picture
- R) Concrete pad drawing

SYNOPSIS

The application proposes a change of use to a coffee roaster and retail and exterior changes to incorporate additional doors.

ARTICLE II: ADMINISTRATIVE PROCEDURES

Section 222 A. Conditional Uses: 1, 3, 4 and 5

Section 223 Development Review Board Site Plan and Design Review

Section 224 Development Review Board Site Plan and Design Review Submission Requirements

Section 227 Plan Changes after Receiving a Development Review Board Decision

Section 233 Dimensional and Sign Waiver Application and Review Process of the Development Review Board

Finding of Facts: This standard has been met, all exhibits have been received & verified.

Conclusions of Law: Article II is met

ARTICLE IV: DISTRICTS & USES

Section 420 Uses

Section 423 Conditional Uses

Section 424 Secondary Uses

Section 430-433 Legal Non-Conforming Structures, Lots, or Uses

Section 440-441 Height Limitations

Section 445-448 Exceptions (Setbacks, Small Structures, Agricultural, and Community Facility /Municipality)

Finding of Facts: Current use of application is Retail. Additional use of manufacturing is recommended by DRB

Conclusions of Law: Article IV is met

ARTICLE IV (CON'T) –

Section 450: Districts

A) Conservation

B) Village (a) within the HDRD and (b) outside the HDRD have unique dimensional requirements

C) Residential

D) Resort Residential

E) Commercial/Residential

F) Resort Commercial/Residential

DISTRICT

Finding of Fact: Subject property is in the Village District is not within the Historic Design Review Overlay District (Section 450 B). The property is identified as Tax Map: #20-20-037.000

Conclusions of Law: The proposed land development is subject to zoning applicable to the Village District.

USES

Finding of Facts: The Primary Use of the structure is Retail & the secondary Use is Manufacturing

Conclusions of Law: The proposed Uses are Conditional Uses in this district.

ARTICLE VII: STANDARDS

Section 710: Use Performance Standards

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

Findings of Fact: The coffee roaster will not provide vibrations outside of the property line.

Testimony provided by applicant states that no vibration will be discernible at the property line.

Conclusions of Law: This Use Performance Standard is met.

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.

Findings of Fact: The coffee roaster will not have noise outside of the property line. Testimony provided by applicant states that no noise will be discernible at the property line.

Conclusions of Law: This Use Performance Standard is met.

C. Air Emissions for Commercial Operations: There shall be no emission of dust, ash, smoke or other particulate matter that can:

1. Cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity.
2. Contaminate the property or beyond the property boundaries.
3. Have solid or liquid particulates in concentrations exceeding state standards.
4. Cause odorous matter in quantities as to be offensive

Findings of Fact: Vermont Air & Quality Division Section chief provided written testimony that an air permit is not required for roasting operations less than 1 million lbs. Applicant stated that they will be below 7,200 lbs per year. Testimony was provided by the applicant that they will not roast more than 150 pounds of coffee a week. Hours of operation will be from 8am-5pm. Applicants also testified that the roaster combined with the oxidizer will eliminate 97-99% of the emissions from the roasting operation.

Conclusions of Law: This Use Performance Standard 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.

Findings of Fact: The proposed use will not create injurious or noxious damage.

Conclusions of Law: This Use Performance Standard is met

Section 720: Applicability of Conditional Use Standards and Site Plan and Design Guidelines:

The Development Review Board shall utilize the Listing of Structures in the State and Federal Registers of Historic Places (Appendix II) to determine the historical significance of all pre-existing Structures seeking written decision and approval for alteration, renovation or change.

Finding of Facts: The subject parcel is not listed as a historical place.

Conclusions of Law: Section 720 is not applicable.

SECTIONS 721: GENERAL STANDARDS

The proposed use shall protect against adverse effect on:

- A: The Capacity of Existing or Planned Community, Municipal or Educational Facilities**
- B. Traffic on Roads and Highways**
- C: Bylaws and Ordinances in Effect**
- D. Utilization of Renewable Energy**
- E. Air Quality**

F. Character of the Area

Findings of Fact: The purpose of the Village District is:

“To retain the character of the existing village, provide for future residential and commercial development through historically appropriate Structures and business types at appropriate densities, and promote residential and tourist quality of life by preserving and developing a clustered village reflecting a visibly vibrant and energized community.

Development and reconstruction shall reflect the character and ambiance of the historic village.

Businesses shall promote economic stability and sustainability of the town through contributing substantially to the economic viability of the community. Businesses shall provide a substantially unique retail and service experience to attract visitors and meet the needs of residents. Businesses shall reflect the special character and ambiance of the town. Businesses shall be small in scale consistent with the clustered downtown of the historic village.”

Finding of Facts: Proposed changes do not apply to provisions. The proposed change is consistent with the defined purpose of the Village District and is consistent with the character of the area.

Conclusions of Law: The proposed change is consistent with the defined purpose of the Village District and is consistent with the historic nature of the Village. Standard 721 F is met.

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

A. Preserving the Town's Character

B. Economic Development Contributing to the Character of the Town

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

D. Formula Businesses

E. Maximum Square Footage of Retail (2000 square feet)

F. Building Scale Conformity

G. Utility Placement

Findings of Fact: The proposed land development is not applicable to provisions A-G.

Conclusions of Law: The proposed land development meets the requirements of Section 722

SECTION 730: CONDITIONAL USE – SPECIFIC STANDARDS

A. Lighting and Glare: Shall be shielded and downcast. Glare and reflection is prohibited if it is an unreasonable nuisance to other property owners or tenants, does not contribute to aesthetics, scenic value or character of the area, or could impair vision of pedestrians or drivers. In HDRD and Village District exterior lighting must be consistent with historic character of the commercial area of the village

Findings of Fact: Proposed lighting include installation of 4 downcast lights & 2 recessed lights on the exterior of the building. The applicant provided testimony that the kiosk will have no interior lighting. Also the joint applicant for the antique store provided testimony that the antique store will not additional exterior lights.

Conclusions of Law: Standard 730 A is met.

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

Findings of Fact: During construction, there will be no work that will create safety hazards per testimony from applicants.

Conclusions of Law: Standard 730 B is conditionally 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: Applicants provided testimony that general automobile traffic will be directed to rear of building for parking. 2 Handicapped parking locations will be available at the front of the building. Spaces will be located away from doors to maximize pedestrian foot traffic.

Conclusions of Law: The decision will be conditioned on the traffic and pedestrian safety precautions noted above. Standard 730 C is conditionally met

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

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

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

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

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

5. Minimize visual impact of parking/loading areas

6. Buffer parking areas if needed for safety or aesthetics

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

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

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

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

Findings of Facts: Parking impacts from the proposed land development include parking at rear of building & 2 handicapped parking spots at the front of the building. Applicant provided testimony that there will be signage on the outdoor coffee kiosk to instruct patrons to park at the rear of the building during business hours.

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 change 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: Landscaping and Screening opportunities to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties include window boxes along the front of the building.

Conclusions of Law: Standard 730 F is conditionally met

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

- Safe and appropriate water management including water supply/availability, stormwater retention/absorption, and impervious surface/runoff management.

- prevent and control against water pollution

- 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: Existing building features will contain water runoff as testimony of building owner.

Conclusions of Law: Standard 730 G is conditionally 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: proposed application does not apply.

Conclusions of Law: Standard 730 H is conditionally 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: proposed application does not apply.

Conclusions of Law: Standard 730 I is conditionally met.

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

Findings of Fact: proposed application does not apply.

Conclusions of Law: Standard 730 J is conditionally 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: This waterway is not a Shoreland to a body of water of greater than 10 acres.

Conclusions of Law: Standard 730 K is not applicable.

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

Findings of Fact: Property is not within the Flood Hazard District. Testimony provided by John Broker- Campbell

Conclusions of Law: See responses under Article VI above.

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

Findings of Fact: The proposed land development is not for Commercial Development. Proposed development is consistent with Vermont Commercial Building Energy Standards

Conclusions of Law: Section 730 M is met.

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.

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 1-6 & A-R and the testimony provided. Any changes to the plans will require an administrative approval from the Zoning Administrator and/or a review by the Development Review Board, in conformance with the ordinance.
2. Business hours will be from 8am-5pm
3. Business is permitted to roast 150 pounds of coffee per week. Applicant will be required to print a weekly report at EOW & log weekly report for 90 days. Applicant must provide these documents to ZA if requested for review.
4. Should the operation generate substantial odors in violation of the nuisance & odor regulation section 5-241 of The Vermont Air Pollution Control Regulation, the agency may require the roaster to be equipped with effective emission controls to mitigate these odors.
5. Parking for patrons will be at the rear of building with 2 handicapped parking spaces at the front of the building. Handicapped parking spots must be away from door entrances to maximize pedestrian safety.
6. Outdoor kiosk will have no interior lighting & must have sign directing patrons to park in rear during business hours.

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

If unused, this Approval expires 2 years from the date of issue. A request for extension may be made in writing to the Development Review Board before the expiration date. Such request shall be in the form of an APPLICATION FOR EXTENSION.

There is a thirty (30) day appeal period from the date of signature before this Approval becomes final. In addition, all fees must be paid and a Zoning Permit *must* be issued prior to the commencement of any work requested in this application. When a Zoning Permit is issued, there is an additional fifteen (15) day appeal period before the Permit becomes final. Work may commence when the Permit has been issued and all Appeal periods have ended.

This approval *does not relieve you*, as applicant, from obtaining any and ALL applicable State and other local permits.

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

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

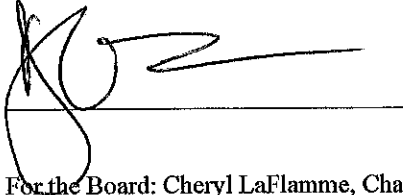
Diane Abate
Cheryl LaFlamme
Charles Foster

OPPOSED:

None

ABSTAINING:

None



A handwritten signature in black ink, appearing to be 'CL', is written over a horizontal line.

For the Board: Cheryl LaFlamme, Chair

Date: 5/21/2020

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

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