

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: **Casey Goddard**

Owner/Applicant(s) Mailing Address: 767 So. Shirkshire Road, Conway MA 01341

Address of the subject property: **64 East Main Street**

Tax Map: # **02121084000**

A copy of the request is filed in the office of the Board and is referred to as: **#2020-023**

Description of Case per Public Notice:

Application # **2020-023**: Owner: Casey Goddard

Application is being made to consider converting a single-family residence into a five-bedroom vacation rental.

Applicable Wilmington Code Sections:

Article II -Sections: 222 A 1,3,4,5, 6, Sections 223 & 224

Article IV –Sections 420; 423; 440; 450 B 4

Article VII –Sections 708; 710; 720; 721 B, E, F; 730 A, D, H

Notice for a public hearing was published in the Valley News on: **July 9, 2020**

Notice was posted in three public places on: **July 8, 2020**

A copy of the notice was mailed to the applicant on: **July 9, 2020**

A copy of the notice was mailed to the abutters on: **July 9, 2020**

Original Hearing Date: August 3, 2020

Appeal period for this Case expires on: September 6, 2020

Approval expires on: August 6, 2022

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

Applicants and property owners, Erica Goddard and Casey Goddard provided testimony. Applicants seek to change the current Use from One Family Dwelling to a One Unit Residential Short-Term Rental Property with five bedrooms. Applicants testified that the Dwelling Unit would be rented to short term vacationers as a whole house.

EXHIBITS

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

1. Application
2. Notice of Hearing
3. Plot Plan – Version 1 of the Plot Plan with Parking
4. Floor Plans 64 East Main Street – Pages 1-3
5. 64 East Main Street – photos views from front
6. Abutters Notice

SYNOPSIS

The application proposes a change of use from a Dwelling, One Family to a Vacation Rental Property.

ARTICLE II: ADMINISTRATIVE PROCEDURES – Applicable Sections

Section 222 A. Conditional Uses:

1. Change in Use or New Use
3. General and Specific Standards
4. Use Specific Standards
5. Performance Standards requirements
6. Commercial Parking and/or Loading Area

Section 223 Development Review Board Site Plan and Design Review

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

ARTICLE IV: DISTRICTS & USES – Applicable Sections

Section 420 Uses

Section 423 Conditional Uses

Section 440 District and District Requirements

Section 450: District Purposes and Descriptions; B) Village District (VIL)

B. Village District (VIL) Purpose: 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 and vibrant and

energized community.

Finding of Facts: Subject Property is in the Village District. The current Use is a Permitted Use in the Village District – *Dwelling, One Family*. Proposed Use is '*One Family Short-term Vacation Dwelling*' – Under Section 426: Uses Not Provide For – ...legal use not listed or not defined may be approved as a Conditional Use upon finding by the DRB that such Use is of the same general character as those Permitted or Conditional Uses within the district and will not be detrimental to other Uses within the district or to the adjoining land Uses.

Conclusions of Law: *One Family Short-term Vacation Dwelling* is of the same general character of '*Dwelling, One Family*' and is of the same general character of Permitted and Conditional Uses within the Village District and is not a detriment to other Uses within the district. This proposed Use complements the Village purpose by promoting tourism that supports the local economy.

ARTICLE VII: STANDARDS

Section 708: Non-Conforming Uses

Finding of Facts: The property and proposed Use does not fall under 'Non-Conforming Uses'.

Conclusions of Law: This section is not applicable.

Section 710: Use Performance Standards – the following standards shall apply to all Uses and land development in the town.

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

Findings of Fact: Based on applicants' testimony - The proposed change of use will not provide continuous permanent or frequent vibration discernable 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: Based on applicants' testimony - The proposed change of Use will not result in ongoing or frequent noise in excess of normal conversation at the property line. The applicant testified that they do and will continue to provide a memo to vacationers regarding the town's zoning ordinance on excessive noise levels particularly between the hours of 9pm and 7 am. Applicants testified they also have a noise monitoring device on

the exterior of the property to alert them should a noise issue occur on the property that could become a disturbance to a neighbor.

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: Based on applicants' testimony – The proposed change of Use will not result in activities on property that would be damaging to humans, animals or vegetation or result in toxic or offensive emissions of dust, ash, smoke or other particulate matter.

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: Based on applicants' testimony - The proposed change of Use will not create hazards that will cause injury or damage to humans, animals' vegetation or property. that would create injurious or noxious damage. Applicants testified that they don't permit the use of fire-pits or fireworks on the property.

Conclusions of Law: This Use Performance Standard is met.

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

The DRB will complete a Site Plan Review and a Design Review as needed to determine conformity with the Standards of the Article VII.

Findings of Fact: Applicants submitted a site plan which showed parking for four cars. Applicants provided testimony that they plan to provide a turn around at the front of the property to allow cars to exit safely onto Route 9 vs backing out onto the road. Due to the slope some re-grading will be needed. Applicants were asked to review the town's sidewalk plans to make sure there are no conflicts. Applicants testified they plan to use compact gravel initially with plans to provide a paved surface in the future. Applicants also testified that they created a screened platform for setting trash cans out for same day pick-up. Empty cans will be brought to the back or side of the house during non-pick-up days.

Conclusions of Law: The applicant's testimony and submitted site plan completes the Site Plan and Design Review requirements and conforms with the Standards of Article VII.

SECTION 721: Conditional Uses – General Standards

In all districts, all Conditional Use development, Land Development or Use shall not result in an adverse effect on any of the following:

- A. The capacity of existing or planned community, municipal or education facilities
- B. Impact on traffic, roads, highways, transportation system, pedestrian walkways in the vicinity
- C. By-laws and ordinance in effect at the time
- D. Utilization of renewable energy resource
- E. Air Quality
- F. Character, aesthetics and scenic value of the neighborhood and area affected as defined by the purpose of the zoning district within which the project is located and stated policies and standards of this ordinance and the Town Plan

Findings of Fact: Items A, C and D are not applicable.

With respect to B, applicants are planning to improve traffic safety by creating a vehicle turnaround on the property to allow guests to exit onto Route 9 without having to back into Route 9 traffic.

With Respect to E: applicants testified they will not allow guests to have any outdoor wood burning fire-pits.

With Respect to F: The proposed Conditional Use does not have an adverse effect on the character or aesthetics of the village.

Conclusions of Law: The proposed Conditional Use will not result in an adverse effect on the General Standards items A- F.

SECTION 730: Specific Standards

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

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: Based on applicants' testimony they installed a non-shielded lamp post in the front of the property that will be removed to make room for the driveway turn around. There is also low-level deck lighting and path lighting near parking. Applicants

understand that any new lighting must meet dark-sky requirements (be shielded and downcast) must not be a nuisance to other property owners or impair vision of pedestrian or drivers and should complement the historic character of the village.

Conclusions of Law: Standard is met.

B. Safety: Shall minimize physical hazards where there are potential safety hazards either from temporary or permanent activities.

Findings of Fact: Based on applicants' testimony they have installed low level exterior lighting and deck railing to minimize safety hazards.

Conclusions of Law: Standard 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: Based on review of applicants' testimony and exhibits a vehicular turn around will improve traffic safety by allowing guests leaving the driveway to not have to back out into Route 9.

Conclusions of Law: Standard is met under the condition of adding the vehicular turn around.

D. Commercial Parking and Loading:

All Commercial parking and loading areas in all districts shall adhere to the following standards:

1. Parking Spaces Required: Provide off-street parking if the change of Use, erected, or altered or extended is in such a way that it will likely increase the need for more parking there shall be off-street parking spaces as set forth below. (Historic Design Review District is exempt)

2. Size of 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: The minimum number of required spaces are:

a. Dwelling, Multi-Family: Two (2) parking spaces for every Dwelling unit.

4. Drive-up Windows: No waiting lines in public right-of-way.

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: This is not a Commercial Property. Under Zoning each Dwelling Unit must provide 2 parking spaces. Since the change of Use is from a One Family Dwelling to a One Unit Dwelling for Short-term Rental. This is still considered a single unit residential dwelling and therefore only two parking spaces are required. Applicant is voluntarily providing space for four.

Conclusions of Law: Standard 732 D is not applicable to this property.

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

Findings of Fact: The proposed change of Use does not involve road development.

Conclusions of Law: 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: Based on applicant exhibits and testimony no major landscape changes are being proposed, beyond ordinary flower planting, tree and shrub trimming to maintain attractive appearance of property, apart from approved driveway turnaround.

Conclusions of Law: Standard 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, stormwater 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: Based on exhibits and testimony, no changes are being proposed to the land that would affect land or water management.

Conclusions of Law: Not Applicable

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 subject property is on town water and sewer.

Conclusions of Law: Not applicable.

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: No changes or impact to Natural Resource and Features are proposed.

Conclusions of Law: Not applicable.

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

Findings of Fact: No proposed development

Conclusions of Law: Not applicable.

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: No proposed development.

Conclusions of Law: Not applicable.

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

Findings of Fact: Mike Tuller provided testimony that the Property is not within the Flood Hazard District.

Conclusions of Law: Not Applicable

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

Findings of Fact: There is no proposed land development, and this is not a Commercial Development.

Conclusions of Law: 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.

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, 3, 4 and 5 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. An extension to the driveway to allow vehicles to pivot around in order to safely exit onto Route 9 vs. backing into traffic should be completed within 90 days of this notice.
3. During construction of the turnaround provide safety precautions to ensure pedestrian and vehicular safety.

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:

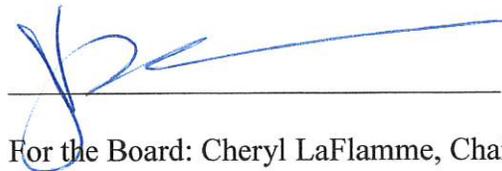
Diane Abate
Cheryl LaFlamme
Charles Foster

OPPOSED:

None

ABSTAINING:

Mary Brady



Date: 8/6/2020

For the Board: Cheryl LaFlamme, Chairperson

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.

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