

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: **Agent, Nathan Matys on behalf of property owner Robert Covey, Sr**

Owner/Applicant(s) Mailing Address: 20 Fairview Av., Wilmington VT 05363

Address of the subject property: **312 Route 9 East, Wilmington Vt**

Tax Map: # **00701056.000**

A copy of the request is filed in the office of the Board and is referred to as: **#2020-031**

**Description of Case per Public Notice:**

Application # **2020-031**: Owner: Robert Covey, Sr.  
Agent: Nathan Matys

Application is being made to consider change of use of an existing equipment repair and storage use building to an automobile service station and repair garage.

Applicable Wilmington Code Sections:

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

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

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

Article VIII –Sections 830, 831, 832, 840, 842, 844, 850, 870, 873, and 874.

Notice for a public hearing was published in the Valley News on: **July 30, 2020**

Notice was posted in three public places on: **July 30, 2020**

A copy of the notice was mailed to the applicant on: **July 30, 2020**

A copy of the notice was mailed to the abutters on: **July 30, 2020**

**Case Heard: August 31, 2020**

**Appeal period for this Case expires on: October 17, 2020**

**Approval expires on: September 17, 2022**

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

Applicant, Sheila and Robert Covey, Sr, and Nathan Matys provided testimony as Owner and Agent representing the case. Applicant seeks to change the current Use from Equipment Repair, Maintenance Storage to Automobile Repair.

### **EXHIBITS**

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

1. Notice of Hearing
2. Application (4) PAGE
3. Proposed Change of Use – Narrative by applicant (2) PAGE
4. Lot Plan
5. Concept Plan
6. Building Elevations
7. Proposed Freestanding Sign Elevation
8. Flood Hazard Compliance Letter – w/ Floodway map
9. 312 Rt 9 Photos (5) PHOTOS
10. Abutters Letter w/List

### **SYNOPSIS**

The application proposes a change of use from a Equipment Repair & Storage to Automobile Repair.

### **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) Commercial/Residential District

E. Commercial/Residential District (COM/RES) Purpose: The purpose of this district is to:

encourage clustered economic development while preserving designated open spaces and historic village settlement patterns thus preventing sprawl and roadside strip development. PUDs are encouraged within the Commercial/Residential District and such types of development must meet the PUD requirements as well as consider physical and environmental limitations, such as flood hazard areas, wildlife habitat, steep slopes and traffic volume and flow.

**Finding of Facts:** Subject Property is in the Commercial/Residential District. The current Use is a Permitted Use in this District. Proposed Use is also a permitted Conditional Use in this district.

**Conclusions of Law:** Automotive Services and Repair Garage is an allowed Conditional Uses within the Comm/Residential District.

## **ARTICLE VII: STANDARDS**

**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 no permanent or going vibration will be 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 no excessive or frequent noise will be discernable 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:** Based on applicants' testimony there will be no concentrated emissions of dust, ash or smoke that would cause damage to humans, animals or vegetation or create offensive odorous matter, contaminate solids or liquids that exceed state limits. Applicant testified that repairs will not include major body work, welding or painting.

**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 see response above.

**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

**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: No adverse effect.

With Respect to E: No Adverse Effect.  
With Respect to F: No Adverse effect.

**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 no additional lighting is to be added.

**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 there will not be any activities that would create a physical hazard or potential safety hazard.

**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, exhibits and existing conditions, no changes are being proposed to the existing access drive from Route 9. The proposed business will not disrupt traffic patterns, effect safety or impact navigation by foot or bicycle.

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

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: 0

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:** Based on applicants exhibits and testimony no changes to existing property. Current property has ample parking. Parking is shielded behind natural vegetation and trees along Route 9.

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

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. Natural tree and vegetation to provide screening to remain.

**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 property is subject to State requirements for septic waste and potable water.

**Conclusions of Law:** Applicant is responsible for obtaining a wastewater and potable water permit.

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:** Per Mike Tuller's testimony and Exhibit 10, subject property does not pose a concern regarding potential flood-related impacts.

**Conclusions of Law:** Provision is met.

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:** Not Applicable.

## **SECTION 800: SIGNS**

### **Section 801: Purpose**



- A. Provide for orderly and appropriate signage
- B. Protect the economic and scenic values of the Town
- C. Prevent hazards to users of the walkways and roads in Town
- D. Encourage a style and scale of outdoor advertising that is compatible with the Rural Historic New England Town character
- E. Promote economic development

**Section 831: Types of Signs (Requiring a Zoning Permit)**

Permitted Signs will be one of the following two types.

- 1. Freestanding
- 2. Structure Mounted

**Findings of Fact:** Applicant submitted an elevation of a free-standing sign. (exhibit 7)

**Conclusions of Law:** A freestanding Sign is a permitted type.

**Section 832: Number of Signs**

Each Commercial Business other than Home Occupants and Home Business may have:

- A. One (1) Freestanding sign – provided setback requirements of section 873 are met.
- B. One (1) Overhanging Sign – If sign overhangs a right-of-way or property not owned by the applicant it requires written approval of the owner of the land or right-of-way.
- C. One (1) Structure Mounted – per Customer Entry (other than an overhang sign)
- D. Home Business and Home Industry are allowed one (1) Structure Mounted or one (1) Freestanding sign.

**Findings of Fact:** Applicant testified that they plan to have one (1) Freestanding Sign which would be located on a state highway right-of-way. Refer to Exhibit 5.

**Conclusions of Law:** Since the sign is on a state highway right-of-way, applicant must obtain a Permit from the State.

*Signs overhanging a state property right-of-way must obtain a Permit from the State pursuant to 19 V.S.A. 111(a). Signs overhanging a property not owned by the sign applicant must obtain the written permission of the property owner whose property is being overshadowed.*

**Section 840: Obtaining a Permit**

**Section 842: When is a Zoning Permit Required**

A sign Permit shall be secured from the Zoning Administrator.

**Section 844: Obtaining a Zoning Permit for a Sign**

**Findings of Fact:** A completed zoning Permit application was submitted to the Zoning Administrator for review.

**Conclusions of Law:** Condition met.

**Section 850: Conditional Sign Waivers Requiring Written Decision and Approval from DRB**

**Findings of Fact:** Not Applicable  
**Conclusions of Law:** Not Applicable.

**Section 860: Signs Not Allowed**

**Findings of Fact:** Not applicable  
**Conclusions of Law:** Not Applicable.

**Section 873: Setback and Height Limitations – Applying to ALL Signs**

- A. Signs may overhang an adjacent property with the written permission of the property owner whose property the sign is overhanging. Signs shall not be within the right-of-way of a public road, except for Awnings and Hanging signs which may overhang a public way in the Historic Design Review District with has a zero setback. Signs overhanging a state right-of-way require a Permit from the state.
- B. Free standing signs shall be no more than sixteen feet to the top of the sign from the average normal grade of the ground.
- C. Freestanding signs shall be set back ten feet from the right-of-way of any Public or Private Road, except in the Historic Design Review District that has a zero setback. In no case shall a sign impeded traffic visibility or public safety.
- D. Freestanding signs shall be set back ten feet from the side or back property line in all districts except the Historic Design Review District that has a zero setback.
- E. All hanging signs in all districts shall provide at least seven feet of unobstructed area down vertically to any pedestrian walkway.

**Findings of Fact:** Applicant will need written permission from the State to place sign on State property. Exhibit 7 notes that sign will not exceed fifteen from top of posts to average normal grade. Applicant testified sign would not be less than 10' from the public road.

**Conclusions of Law:** Applicant will need written approval from State for sign location. Item B and C are met. Items D & E are not applicable.

**Section 874: Calculation of Area and Number of Signs**

**Findings of Fact:** Applicant has submitted for one (1) Freestanding sign which is 32 sq st. per side.

**Conclusions of Law:** Freestanding Sign meets allowable square foot area and number of signs.

**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 1-10 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. State requirements on receipt of state permitting for waste-water and potable water from state of Vermont.
3. Location of Sign is subject to State Approval and Requirements.

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:

Cheryl LaFlamme  
Mary Brady  
Fred Houston  
Diane Abate

OPPOSED:



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Date: 9/16/2020

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.*