

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: **Judith Kline**

Owner/Applicant(s) Mailing Address: 89 Hillside Drive, Wilmington VT 05363

Address of the subject property: **22 West Main St**

Tax Map: # **20-20-079.000**

A copy of the request is filed in the office of the Board and is referred to as: **#2020-054**

Description of Case per Public Notice:

Application # **2020-054**: Owner: Judith Kline

Application is being made for change of use from officer to retail on the ground floor level & signage

Applicable Wilmington Code Section II, IV, V, VI, VII, VIII

Hearing Date: **November 16, 2020**

Notice for a public hearing was published in the Valley News on: **October 29, 2020**

Notice was posted in three public places on: **October 29, 2020**

A copy of the notice was mailed to the applicant on: **October 29, 2020**

A copy of the notice was mailed to the abutters on: **October 29, 2020**

Appeal period for this Case expires on: 1/10/2021

Approval expires on: 12/11/2022

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

Karen Wheeler

EXHIBITS

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

1. Application
2. Project summary email
3. Abutter List
4. Email from Karen Wheeler
5. Plot Plan
6. Floor Plan
7. Photo of building from driveway
8. Photo of backside of building from driveway
9. Photo of rear of building
10. Photo of front of building
11. Email from John Broker Campbell from Dept of Environmental Conservation
12. Sign application
13. Building entrance sign
14. Fence sign

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 440-441 Height Limitations

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

Finding of Facts: The current use of the building is: 1st floor is office & 2nd floor is retail/office. Change of use submitted to change.

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 & within the Village Design Review District

Conclusions of Law: Building is located in the Village District & VDRD- no development planned. Findings met

USES

Finding of Facts: The Primary Use of the Office & conditional use of retail.

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

Article VI Flood Hazard District

Section 602 (A-C): Lands to Which These Regulations Apply

These regulations apply to development in all areas of the town identified as special flood hazard in and on the most current flood insurance studies and maps published by the Dept. of Homeland Security, FEMA, and National Flood Insurance Program (NFIP), as provided by the ANR pursuant to 10 V.S.A. section 753. The base flood elevations and floodway limits (zones A1 – A30, AE and AH) provided by the NFIP shall be used to administer provisions of the regulation. If none is provided by the NFIP then information available from the state or federal agencies or other sources shall be obtained and reasonably utilized.

Conclusions of Law: Flood Hazard District regulations are applicable to the proposed development which lies within the Flood Hazard district of North Deerfield River Floodway. Based on current application, Article VI

Permitted Uses

Finding of Facts: Application is not requesting any development changes to the property. JBC made testimony in email that if any changes made in interior (even if minor) or exterior will need to comply with ‘All development Standards’ within Town of Wilmington Flood standards.

Conclusions of Law: Article VI 602 has been met

Development Standards – Flood Fringe Areas Section 610 C (1)

Finding of Facts: New construction and existing buildings to be substantially improved shall have the lowest floor, including basement, elevated to or above the base flood elevation or together with attendant utility and sanitary facilities to be designed so that below the base flood elevation & the Structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Conclusions of Law: Standard is met.

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: Testimony provided by agent.

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: Testimony provided by agent.

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: Testimony provided by agent.

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: Testimony provided by agent.

Conclusions of Law: This Use Performance Standard is met

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: Testimony provided by agent.

Conclusion of Law: General standard is met.

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.”

Conclusions of Law: Proposed change of use is consistent with the defined purpose of the Village District and is consistent with the character of the area.

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: Testimony provided by agent.

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: Testimony provided by agent.

Conclusions of Law: Standard 730 A is met.

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

Findings of Fact: The site is within Flood Hazard District. No development is proposed within this area.

Conclusions of Law: Standard 730 I is met.

ARTICLE VIII SIGNS

ARTICLE VIII: SIGNS

Section 801: Purpose

Section 802: Application in District

Section 831: Types of Signs

Section 832: Number of Signs B, C, D

Section 833: Size of Signs

Section 850: Conditional sign waivers requiring written decision & approval from the DRB

Section 870: Signs Standards: Applying to all signs

Section 871: Sign Design guidelines

Section 873: Setback & height limitations

Section 874: Calculation of area & number of signs

Findings of Fact: Application is made for sign above Unit #3 exterior entrance & additional sign along fence located by driveway access by unit #3. Fence sign is temporary to be used when store is open per testimony. Sign above entrance dimensions are 72” long by 12” wide. Fence sign is 36” wide x 24” long.

Conclusion of Law: Article VIII is met.

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 1-14 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. Per Testimony from John Broker Campbell, no exterior or interior changes to the building can be made without DRB approval as property falls within Flood District.

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
 Charles Foster
 Mary Brady
 Fred Houston (alternate)

OPPOSED:

None

ABSTAINING:

None

Date: 12/11/2020

For the Board: Cheryl LaFlamme, Vice 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.