

**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: **Electric Ice House, LLC. – Ed Erhard**

Owner/Applicant(s) Mailing Address: 70-09 73<sup>rd</sup> Place, Glendale, NY 11385

Address of the subject property: **6 North Main Street**

Tax Map: **21-20-034.000**

A copy of the request is filed in the office of the Board and is referred to as: **#2021-048**

**Description of Case per Public Notice:**

Application # **2021-048**

Owner: Electric Ice House, LLC. – Ed Erhard; Agent: Debra Morton

Address: 6 North Main Street, Wilmington, VT

**Applicant proposes a change of use from Retail Business to Service Business.**

Applicable Code Sections:

Article II: Sections 222, 223, 224, 226, 227

Article IV: Sections 420, 423, 440, 450 B

Article V – All Sections

Article VI – 602, 604, 606, 610 A, L.

Article VII: Sections 710, 730 A, L.

Article VIII – All Sections

Notice for a public hearing was published in the Valley News on: **July 15, 2021**

Notice was posted in three public places on: **July 13, 2021**

A copy of the notice was mailed to the applicant on: **July 13, 2021**

A copy of the notice was mailed to the abutters on: **July 13, 2021**

**DRB Hearing Date: August 2, 2021**

**Appeal period for this Case expires on: September 19, 2021**

**Approval expires on: August 19, 2023**

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

Debra Morton

**EXHIBITS**

The following Exhibits were placed in evidence by the applicant or their agent:

1. Application (3 pages)

2. Drawing of building in reference to N Main and Deerfield River
3. Photo image of front of 6 N Main
4. Photo image of inside example of massage table in a room
5. Photo image of empty space inside 6 N Main from front door
6. Photo image of empty room inside 6 N Main
7. Photo image of bathroom inside 6 N Main
8. Flood Zone image- red lines indicating flood zone
9. Sign application (2 pages)
10. Drawing of proposed sign design (not to scale)
11. Photo image with drawing of proposed sign location on front of the building
12. Email from John Broker Campbell re: floodplain permitting
13. Email from John Lazelle regarding current wastewater allocation
14. Notice of Hearing with list of Abutters

## **SYNOPSIS**

The applicant proposes a change of use from retail to services in which the following services will be offered: facials, pedicures, hair removal, massage and yoga classes. Applicant expects that these services will be offered as trained personnel are found to execute them.

## **ARTICLE II: ADMINISTRATIVE PROCEDURES**

Section 222 Land Development and Uses Requiring Development Review Board Written Decision and Approval

Section 223 Development Review Board Site Plan and Design Review

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

Section 226 Development Review Board Decisions

Section 227 Plan Changes after Receiving a Development Review Board Decision

**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 Districts and District Requirements

Section 450 B District Purposes and Descriptions- Village District (VIL)

## **ARTICLE IV (CON'T) –**

Section 450: Districts

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

1. Purpose: The 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. Business sizes will be small in scale, consistent with the clustered downtown of the historic village.

## **DISTRICT**

**Finding of Fact:** Subject property is within the Village District (Section 450 B). The property is identified as Tax Map: parcel # (242)02120034.000

**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 currently Retail.

**Conclusions of Law:** The applicant is requesting a change from retail to services (service business)

## **ARTICLE V: DESIGN REVIEW DISTRICTS OVERLAY DISTRICTS DESCRIPTION, USES, AND REGULATIONS**

Section 500 Authority

Section 510 Village Design Review District Purpose

Section 511 Village Design Review District Boundaries  
Section 512 Goals of the Village Design Review District  
Section 520 Historic Design Review District Purpose  
Section 521 Historic Design Review District Boundaries  
Section 522 Goals of the Historic Design Review District  
Section 530 Development Review Board Site Plan and Design Review Required on Design Review District Development  
Section 531 Exceptions to Zoning Permit or Development Review Board Site Plan and Design Review Requirements  
Section 540 Site Plan and Design Review Standards

**Purpose:** The basis for the Village Design Review District is to preserve the natural beauty, vistas, and the visual character of the Village of Wilmington. The visual aspects of the Design Review Districts represent an important asset to the community by providing a source of pleasure for both residents and visitors and contributing to the economic development of the community.

**Goals of the Village Design Review District**

- A. To promote the Use of building and property in a manner that benefits the community and individual property owners, while preserving the visual character of the village
- B. To attract visitors and encourage tourism by enhancing the visual character as a New England village
- C. To encourage maintenance of buildings and property, and support a visually attractive village for the pleasure of residents and visitors
- D. To encourage and support economic growth and prosperity within the community while maintaining the visual character of the village.
- E. To encourage public and private investment and to protect the interests of future generations.

**Findings of Fact:** Applicant acknowledges requirements of the Village Design Review Overlay District. Applicant testifies that current application aligns with the goals for these respective districts.

**Conclusions of Law:** Article V is met.

#### **ARTICLE VI: FLOOD HAZARD DISTRICT**

**Section 602 Lands to Which These Regulations Apply**  
**Section 604 Interpretation of Flood Hazard Area Boundaries**  
**Section 606 Conditional Uses**

#### **ARTICLE VI, CONT.**

**Section 610 A L Floodway and Floodway Fringe Areas; Securing Floatables**  
A. Floodway and Floodway Fringe Areas  
L. Securing Floatables

**Findings of Fact:** Applicant testifies that in the event of conditions conducive to flooding, all floatables will be secured.

**Conclusions of Law:** Article VI is met.

#### **ARTICLE VII: STANDARDS**

**Section 710 Use Performance Standards**  
**Section 730 A, L, Specific 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:** Applicant testifies there will be no vibration.

**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:** Applicant testifies there will be no noise between the hours of 9pm and 7am.

**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:** Applicant testifies there will be no air emissions beyond the acceptable threshold.

**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:** Applicant testifies there will be no injurious or noxious practices.

**Conclusions of Law:** This Use Performance Standard is met

### **SECTION 730: CONDITIONAL USE – SPECIFIC STANDARDS**

**A. Lighting and Glare:** All exterior lighting shall be shielded and downcast. Glare and reflection are 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:** Applicant testifies that no additional lighting will be added to the building.

**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:** Applicant address is located in the Flood Hazard District.

**Conclusions of Law:** See responses under Article VI above.

### **ARTICLE VIII: SIGNS**

**Section 800 Purpose**

**Section 802 Application in Districts**

**Section 803 Types of Signs**

**Section 820 Allowed/Exempt Signs (Not requiring a permit)**

**Section 821 Subject to a Maximum of three (3) square feet in total area per side**

**Section 822 Subject to a Maximum of six (6) square feet in total area per side**

**Section 823 Other Signs**

**Section 830 Permitted Signs**

**Section 831 Types of Signs**

**Section 832 Number of Signs**

**Section 833 Size of Signs**

**Section 840 Obtaining a Permit**

**Section 841 Zoning Ordinance Administration**

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

**Section 843 Administrative Amendments to Zoning Permits**

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

**Section 850 Conditional Sign Waivers Requiring Written Decision and Approval from the Development Review Board**

**Section 860 Sign Not Allowed**

**Section 870 Sign Standards – Applying to ALL Signs**

**Section 871 Sign Design Guidelines**

**Section 873 Setback and Height Limitations – Applying to ALL signs**

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

**Section 880 Enforcement and Penalties**

**Section 881 Appeals and Waivers**

**Section 890 Signs for which Provision is Not Made**

Type: Structure Mounted,

One sign is permitted for each building entrance operating primarily as a customer entrance to a commercial business, with a maximum of 24 sq ft per side.

**Findings of Fact:** Applicant's sign design and size falls within the allowable standards for the respective district.

**Conclusions of Law:** Article VIII is met.

**CONDITIONS:**

The application for development is **APPROVED**, without conditions, restrictions, requirements, limitations or specifications.

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:

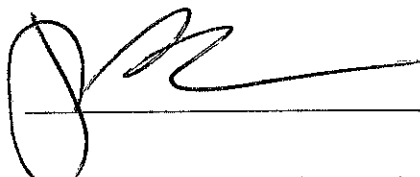
Diane Abate  
Cheryl LaFlamme  
Charles Foster  
Chrystal Holt

OPPOSED:

None

ABSTAINING:

None



For the Board: Cheryl LaFlamme, Chairperson

Date: 8/20/21

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).

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*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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