

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: **Hermitage Members Club, Inc**

Owner/Applicant(s) Mailing Address: 10 Gatehouse Trail, Wilmington VT 05363

Address of the subject property: **10 Gatehouse Trail, Wilmington VT**

Tax Map: # **HAYSTACK.SKI**

A copy of the request is filed in the office of the Board and is referred to as: **#2021-063**

Description of Case per Public Notice:

Application # **2021-063**: Owner: Hermitage Members Club, Inc, c/o Bill Benneyan. Agent: Ham Hodgman, PE, Stevens & Associates, Inc. Proposal to construct the remaining six homes #19,22,25,27, & 38 Stag's Leap Lane. New driveways will be built with retaining walls and improvements to stormwater infrastructure. Power, wastewater and water services will be connected to existing infrastructure.

Applicable Code Sections:

Article II: Sections 222, 223, 224, 226, 228

Article IV: Sections 420, 423, 440, 450 D, F

Article VII: Sections 710, 721 A, B, E, F, 730, 731

Hearing Date: September 20, 2021

Notice for a public hearing was published in the Valley News on: **August 26, 2021**

Notice was posted in three public places on: **August 26, 2021**

A copy of the notice was mailed to the applicant on: **August 26, 2021**

A copy of the notice was mailed to the abutters on: **August 21, 2021**

Appeal period for this Case expires on: December 1, 2021

Approval expires on: November 30, 2023

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

Ham Hodgeman

Bill Benneyan

EXHIBITS

1. Notice of Hearing
2. Letter from Stevens & Associates

3. Application
4. Amendment to Master Plan (37 Pages)
5. Email from Ham Hodgeman on 9/28 with # of units

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 226 Development Review Board Decisions

Section 228 State & Federal permits & Development Review Board

Finding of Facts: This standard has been met, all exhibits have been received & verified. Case is being presented to DRB prior to Act 250 review.

Conclusions of Law: Article II is met

ARTICLE IV: DISTRICTS & USES

Section 420 Uses

Section 423 Conditional Uses

Section 440 District & District Requirements

Finding of Facts: The current use of the buildings valid in current district.

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 Resort Commercial/Resident District

Conclusions of Law: Section 450 is met.

USES

Finding of Facts: The Primary Use is resort.

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: 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: not applicable

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: Not applicable.

Conclusions of Law: This Use Performance Standard is met

SECTIONS 721: GENERAL STANDARDS

In all districts, all Conditional Use development shall protect from undue adverse effects. No Land Development or Use shall result in an undue adverse effect on any of the following:

A. The Capacity of Existing or Planned Community, Municipal or Educational Facilities

B. Traffic on Roads and Highways

E. Air Quality

F. Character of the Area

The character, aesthetics, and scenic value of the neighborhood and area affected, as defined by the purpose or purposes of the zoning district within which the project is located and specifically stated policies and standards of this ordinance and the Town Plan.

Findings of Fact: Testimony provided by agent that Fire Department has approved the access to new project buildings.

Conclusion of Law: General standard is met.

Findings of Fact: The purpose of the Resort Commercial/Residential 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 Resort/Commercial 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.

Conclusions of Law: Proposed change of use is consistent with the defined purpose of the Resort Commercial/Residential District and is consistent with the character of the area.

Conclusion of Law: General standard is met.

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.

Findings of Fact: Building mounted lighting; lights will be shielded downcast per Act 250 regulations/

Conclusions of Law: Standard 730 A is met.

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

Findings of Fact: Testimony provided by agent.

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: Testimony provided by agent.

Conclusions of Law: 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 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 Fact: Testimony provided by agent.

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: Testimony provided by agent, roads conform to requirements.

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: Testimony provided by agent.

Conclusions of Law: Standard 730 F is conditionally 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: Testimony provided by agent. Subject to erosion plan with state

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: Testimony provided by agent. WW Permit is still current on 3 buildings, permit request for 3 remaining buildings.

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: Testimony provided by agent.

Conclusions of Law: Standard 730 I is conditionally met.

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

Findings of Fact: Testimony provided by agent. Subject to Act 250 regulations.

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: Testimony provided by agent.

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: Testimony provided by agent.

Conclusions of Law: Standard 730 I is met.

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

Findings of Fact: Testimony provided by agent.

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.

Section 731: Planned Unit Development Specific Standards

Planned Unit Developments are a conditional Use and must satisfy the standards of Conditional Use as defined in Sections 710 through 740 above. In addition to meeting the Standards of a Conditional Use, a Planned Unit Development (PUD) must meet the Specific Standards that follow. In the case of any conflict between Specific Standards of the PUD and other Standards of this ordinance, the more specific PUD Standard shall take precedence over any similar or conflicting Standard of this ordinance.

- A. **Minimum Acreage:** No application for a PUD shall be considered for approval unless a minimum of two (2) acres of land is contained in any proposal.
Findings of Fact: Project is over two acres of land.
- B. **Contiguous Lands:** No application for PUD shall be considered for approval unless all land contained in any proposal is contiguous.
Findings of Fact: All land is contiguous.
- C. **Open space Preservation:** At least forty (40) percent of the total area of the property shall be dedicated to or reserved as usable common outdoor living space and open land. Open Space shall not include streets, driveways and parking areas. The preservation of Open Space, recreation areas, and/or parks shall be in perpetuity.
Findings of Fact: Over 40% of total area is reserved for open space.
- D. **Total Number of Units:** The total number of units approved for a project shall not exceed the number of residential units or commercial square footage allowed if the land were subdivided into Lots in accordance with the Zoning Regulations for the districts in which such land is located, except as defined in Increased Density (E) below.
Findings of Fact: Unit Density of properties in project application area is .12 units per acre
- E. **Increased Density:** To create open lands, the Development Review Board may approve greater densities than those defined within the Districts of this ordinance.
Approval of density in excess of:
1. One Primary Use Dwelling per acre (Single Family, Two Family, or Duplex, Multi – Family, Mixed Use, or Seasonal), or
 2. One Primary Use Commercial Structure per two (2) acres
- F. **Building Setbacks:**
1. Buildings abutting the perimeter of the PUD a parcel shall have a setback of at least fifty feet (50) from the Lot Line of the PUD.
 2. Side Yard Setback: all residential buildings abutting an interior street, private or public, within the PUD shall be set back twenty (20) from the street.
 3. If a side yard abuts a residentially zoned property or Use or a public or private street, a continuous natural or landscaped setback of twenty feet (20) is required between the commercial/industrial building and the residence. This setback shall be not Used for parking.
 4. Front Yard Setback: A building fronting on a street must be located a minimum of twenty (20) from the back of sidewalk, or back of curb if a sidewalk is not planned at the location.
 5. Rear Yard Setback: if a rear yard of a commercial building abuts a commercial or industrial Use or zoning district, a minimum rear yard setback of ten feet (10) is required. If a rear yard abuts a residential Use or residentially zoned property, a rear yard setback of twenty feet (20) shall be provided. This setback shall not be Used for parking or drives and shall be landscaped.
Findings of Fact: All setbacks are exceeded.
- G. **Municipal Facility Burden:** The cumulative effect of a phased PUD shall not cause transportation networks, municipal facilities, educational facilities or other public services to be unduly burdened.
Findings of Fact: Testimony provided by agent, Fire Department & Town Manager have approved plans. Submitted questionnaire to school district.
- H. **Utilities:** All electric and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities or utilities shall be placed underground by the developer for any development primarily for or occupied by dwellings. The Development Review Board

or Sewer Commission may require easements necessary for the orderly extension of public utilities for future adjacent developments. These extensions shall be underground wherever possible.

Findings of Fact: All utilities will be underground, primary electric line already in place.

- I. **Private Roads:** Private roads may be allowed within a PUD when specifically approved by the Development Review Board. Any new road, public or private, within a PUD shall conform to The Wilmington Town Highway Ordinance.

Findings of Fact: All roads conform to Highway Ordinance.

Conclusion of Law: Section 731 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 1-4 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. Applicant to supply snow removal plan to Zoning Administrator with regards to project areas.
3. Landscaping/screening plan to Zoning Administrator with regards to project areas.
4. Final WW permits to be supplied to Zoning Administrator with regards to project areas.
5. Applicant to required to designate & maintain pedestrian egresses during winter season with regards to snow removal.
6. Applicant has provided testimony via email on 9/28 that the total # of units being created is .12 units per acre.

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
Chrystal Holt
Justin Linder

OPPOSED:

None

ABSTAINING:

None



Date: 11/1/2021

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.
