

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: **Christian Engel and Jennifer Betit-Engel**

Owner/Applicant(s) Mailing Address: PO Box 1757, Wilmington, VT 05363

Address of the subject property: **861 Vermont Route 9 East, Wilmington, VT**

Tax Map: # 10-03-030.000

A copy of the request is filed in the office of the Board and is referred to as: # **2021-083**.

Description of Case per Public Notice:

Application #2021-083: Owner: Christian Engel and Jennifer Betit-Engel. Agent: Eric Craven. Proposal to change of use for a legally non-conforming use (Lodging) to also include a restaurant for public patronage on the subject property.

Applicable Code Sections:

Article II -Sections: 222, 223, 224, 226, 227, 229, 231, 234

Article IV -Sections 430; 431; 440; 450 C

Article VII -Sections 705; 706; 710 A, B; 720; 721 F; 730 F, H

Notice for a public hearing was published in the Valley News on: **11/18/2021**

Notice was posted in three public places on: **11/17/2021**

A copy of the notice was mailed to the applicant on: **11/17/2021**

A copy of the notice was mailed to the abutters on: **11/17/21**

Hearing Date: December 6, 2021

Appeal period for this Case expires on: January 19, 2022

Approval expires on: December 19, 2023

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

Christian Engel
Jennifer Betit-Engel
Eric Craven

EXHIBITS

1. Notice of Hearing
2. Application (3 pages)
3. 11.17.21 Letter to Abutting Property Owners
4. Existing Ground Floor Plan
5. Existing First Floor Plan
6. Existing Second Floor Plan

7. Proposed Ground Floor Plan
8. Proposed First Floor Plan
9. Proposed Second Floor Plan
10. Proposed North & East Elevations
11. Proposed South & West Elevations
12. Proposed Renderings
13. Photographs of subject property (15 pages)

SYNOPSIS:

The applicants are seeking approval to operate a Restaurant and Bar/Lounge inside the existing Horizon Inn as a Conditional Use. The current Primary Use of the property is the legally non-conforming use of Lodging - more than two (2) guest bedrooms.

ARTICLE II: ADMINISTRATIVE PROCEDURES

Section 222 A. Conditional Uses: 1 (Changes in Use or a new Use that is a substantial expansion similar to the prior Use, even within the same category of Use)

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

Section 229: Dimensional, Use, and Sign Waivers Granted by the Development Review Board

Section 231: Legal Nonconforming Structures, Uses, and Lots

Section 234: Dimensional, Use, 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 430: Legal Nonconformities

A nonconforming Structure, Lot and/or Use is a Structure, part of a structure, a Lot (or parcel) and/or a Use that does not comply with the present ordinance, but which was developed legally in conformance with the ordinance in effect that the time it was created or established. This includes:
 B: All Structures, part of Structures, Lots and/or uses existing prior to January 26, 1968, when the first Wilmington zoning ordinance was adopted.

Findings of Fact: Applicants testified that the structure was built and utilized as lodging with service of meals to guests prior to 1/26/1968.

Conclusion of Law: Section 430 is met.

Section 431: Changes to Legal Nonconforming Structures, Lots, and Uses

Nonconforming Structures, Lots & uses shall be allowed to exist indefinitely, in accordance with 24 V.S.A 4303 & 44412

B. Legal Nonconforming Uses

A nonconforming use may be altered or changed for any reason so long as, in the opinion of the Zoning Administrator, it will not increase the degree of nonconformity.

Any Nonconforming use which is not actively engaged in for a period of twelve (12) months

shall be considered a discontinued use and the property will become subject to the requirements of this ordinance unless extension is granted by The Development Review Board.

Findings of Fact: Applicants testified that the structure was built and utilized as lodging with service of meals and drinks prior to 1/26/1968. Applicants seek to open the restaurant and bar/lounge to the general public, which will not increase the degree of nonconformity.

Conclusions of Law: Section 431 is met.

Section 440 District & District Requirements

Finding of Facts: The subject property is in the Residential District.

Conclusions of Law: Section 440 is met

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

Findings of Fact: Subject property is in the Residential District. The property is identified as Tax Map: #10-03-030.000.

Conclusions of Law: The proposed land development is subject to zoning applicable to the Residential District.

USES

Finding of Facts: The current Primary Use is Lodging - more than two (2) guest bedrooms; the proposed uses are Restaurant and Bar/Lounge.

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

ARTICLE VII: STANDARDS

Section 705 Changes to Nonconforming Structures, Lots and/or Uses

Findings of Fact: Applicants testified that the structure was built and utilized as lodging with service of meals to guests prior to 1/26/1968.

Conclusions of Law: Section 705 is met.

Section 706 Nonconforming Structures on Developed Land/Lot

Finding of Facts: Not applicable.

Conclusions of Law: Section 706 of Article VII is not applicable.

Section 710: Use Performance Standards

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

Findings of Fact: Applicants testified that there will be no continuous, permanent, ongoing, or frequent vibration that is discernible 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: Applicants testified that all seating and events would be indoors and there would be no noise at the property in violation of this standard.

Conclusions of Law: This Use Performance Standard is met.

SECTION 721: CONDITIONAL USE - 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:

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: Eric Craven testified that that the proposed use will have no adverse impacts on the character, aesthetics or scenic value of the neighborhood.

Conclusion of Law: General standard is met.

SECTION 730: CONDITIONAL USE – SPECIFIC STANDARDS

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: Applicants testified that current landscaping will be unaffected by the proposed use and that additional annual flowers will be planted.

Conclusions of Law: Standard 730 F 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: Applicants testified that they will obtain a modified wastewater permit for chlorinated water for a restaurant of up to 50 seats.

Conclusions of Law: Standard 730 H is conditionally met.

CONDITIONS:

The application for development is **APPROVED** with the following conditions, restrictions, requirements, limitations and specifications.

1. The applicants shall meet all state and federal permitting standards and obtain all applicable permits.
2. The applicants shall obtain a modified wastewater permit for chlorinated water for a restaurant of up to 50 seats.
3. Per the applicants' testimony, the restaurant and lounge will close no later than 11:00 pm daily.
4. Per the applicants' testimony, all seating and service will be inside the walls of the structure, with no outdoor service or seating.
5. Per the applicants' testimony, the entire restaurant and lounge shall have an occupancy of no more than 50 seats.

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:

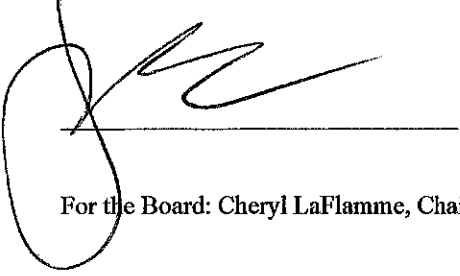
Cheryl LaFlamme
Chrystal Holt
Justin Linder

OPPOSED:

None

ABSTAINING:

None



A handwritten signature in black ink, appearing to be 'Cheryl LaFlamme', is written over a horizontal line. The signature is enclosed in a hand-drawn oval.

Date: 12/20/2021

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.