

TOWN OF WILMINGTON
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT AND STATEMENT OF FINDINGS
WILMINGTON, VERMONT 05363

A request for permit was made to Board by: **103 W. Main -- 2022 LLC**

Owner/Applicant(s) Mailing Address: PO BOX 216, West Orange, NJ 07052

Address of the subject property: **103 W Main Street**

Tax Map: **Parcel ID # 20-20-041.000**

A copy of the request is filed in the office of the Board and is referred to as: **#2022-006**

Description of Case per Public Notice:

Application # **2022-006**: Owner: 103 W. Main St- 2022 LLC

Application is being made for a **change of use from retail to bakery restaurant on the main level of the building & change of use from 2nd floor from retail to long term rental.**

Applicable Wilmington Code Sections:

Article II- 222, 223, 224, 226

Article IV- 420, 422, 423, 424, 430, 440, 450 E, 460, 461

Article VII- 708, 709, 710, 720, 721, 722, 730

Notice for a public hearing was published in the Valley News on:

Notice was posted in three public places on: **February 16, 2022**

A copy of the notice was mailed to the applicant on: **February 15, 2022**

A copy of the notice was mailed to the abutters on: **February 15, 2022**

HEARING DATE: March 7, 2022

Appeal period for this Case expires on: April 22, 2022

Approval expires on: April 22, 2024

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

Chrystal Holt

Andrew Allen

EXHIBITS

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

1. Notice of Hearing
2. Application (3 pages)
3. Plot map
4. Site map
5. Floor plan
6. Exterior photo
7. Interior photo facing Route 9
8. Interior photo facing rear
9. Abutter notice
10. Abutter list
11. Zoning application for apartment
12. Zoning permit
13. Permit memo

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

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 422 Permitted Uses

Section 423 Conditional Uses

Section 424 Secondary Uses

Section 430: 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 present ordinance, but which was developed legally in conformance with the ordinance in effect at the time it was created or established.

This includes:

A. Structures, Lots, and/or Uses improperly authorized as a result of error by the Zoning Administrator

B. All Structures, Lots, and/or Uses existing prior to January 26, 1968, when first Wilmington Zoning ordinance was adopted.

Findings of Fact: Section does not apply

Conclusions of Law: Section met

Section 440: Districts & District Requirements

Section 450: Districts

E) Commercial/Residential

DISTRICT

Finding of Fact: Subject property is in the Commercial/ Residential district

Conclusions of Law: Findings met

USES

Finding of Facts: Current use of property is retail, applicant is requesting change of use to Restaurant

Conclusions of Law: The proposed use change is conditional use

Section 460: Business Uses within a Dwelling or Accessory Structure: Some businesses within a dwelling or Accessory structure are allowed, meaning they do not require a permit. Those not defined to be allowed will require a Permit and/or written decision and approval of Development Review Board as a conditional use. These sections define which business Uses in a dwelling or Accessory Structure are allowed and which require a Permit as a conditional use.

Findings of Fact: Section does not apply

Conclusions of Law: Section met

Section 461: Criteria for Businesses Uses within a Dwelling or Accessory Structure

There are three categories of business use within a dwelling or Accessory Structure: Home Occupation, Home Business, and Home Industry. All three types of business Use within a dwelling or Accessory Structure shall meet the following criteria:

A. The business use must be primarily carried out by the resident and their family members who share the residence.

B. The business has no more than three (3) full time equivalent non-family member, non resident employees.

C. The Use is clearly incidental and secondary to the Use of the dwelling for residential purposes. The Use may take place in no more than 25% of the dwelling space or one thousand (1000) square feet, whichever is greater.

D. The Use may also be carried out in all or in part of an Accessory Structure, up to a maximum of one thousand (1000) square feet.

E. The Use may not change the external character of the dwelling.

F. Any retail sales must be the business' own products and services or ancillary support products.

G. For Home Business & Home Industry there must be adequate parking for client visits. On premises parking should be up to the side and rear of the building if feasible.

Findings of Fact: Section does not apply
Conclusions of Law: Section met

ARTICLE VII: STANDARDS

Section 708 Nonconforming Uses

A. A nonconforming Use may be altered or changed for any reason so long as, in the opinion of the Development Review Board, 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. In a Development Review Board hearing where there is question as to whether a Use has been actively engaged in for a period of of twelve (12) months, the burden of proof is on the applicant to demonstrate active Use in the past twelve (12) months.

Findings of Fact: Section does not apply
Conclusions of Law: Section met

Section 709 Changes in Ownership of Nonconforming Structures, Lots and/or Uses

A Nonconforming Structure, Lot, or Use that changes ownership will have the legal nonconforming status pass to the new owner, as a "grandfathered" nonconforming Structure, Lot, or Use. All "Grandfathered" nonconformities of properties changing ownership will be subject to all of the provisions of Nonconforming Structures, Lots, and/or Uses.

Findings of Fact: Section does not apply
Conclusions of Law: Section met

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. Type 2 Hood for heat & air will be installed.
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

Section 720: Applicability of Conditional Use Standards and Site Plan and Design guidelines

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 Commercial/Residential District:
 “To encourage clustered economic development while preserving designated open spaces and historic village settlement patterns thus preventing sprawl and roadside strip development. PUD’s are encouraged with the 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 Commercial/Residential 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: No changes to existing lighting.
Conclusions of Law: Standard 730 A is met.

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

Findings of Fact: No safety hazards
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: Parking will be available for 6 spots, parking for tenants in rear of building on East side.
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 Facts: Deliveries will be made at main entrance.

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: The proposed change does not involve road development.

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: No additional landscaping

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: Existing runoff management; no changes will be made.

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: Initial approval from Wastewater; waiting on final permit.

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: proposed application does not apply.

Conclusions of Law: Standard 730 I is conditionally met.

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

Findings of Fact: proposed application does not apply.

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: This waterway is not a Shoreland to a body of water of greater than 10 acres.

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: Location is not in flood hazard district.

Conclusions of Law: See responses under Article VI above.

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

Findings of Fact: Will comply.

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.

CONDITIONS:

The application for a dimensional variance to allow the construction of the shed at proposed location is approved with the following conditions, restrictions, requirements, limitations and specifications.

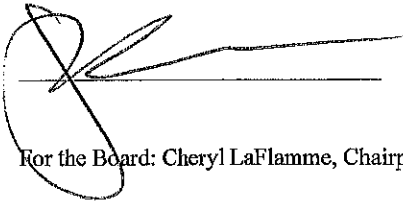
1. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits 1-12 and the testimony provided. Any changes to the plans will require an administrative approval from the Zoning Administrator and/or a review by the Development Review Board, in conformance with the ordinance.
2. Property owners must install parking signs that designate parking for bakery customers
3. Property owners must install no parking signs on right of way to Green Mountain Power facilities
4. Wastewater permit to be filed with the ZA upon receipt.

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:

Charles Foster
Diane Abate
Cheryl LaFlamme

OPPOSED:
ABSTAINING:



For the Board: Cheryl LaFlamme, Chairperson

Date: 3/23/2022

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.