

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: **VT211, LLC**

Owner/Applicant(s) Mailing Address: **PO Box 295, Fairfield, CT 06812**

Address of the subject property: **211 VT Route 9 East**

Tax Map: **Parcel ID # 21-22-060.000 and # 21-22-063.000**

A copy of the request is filed in the office of the Board and is referred to as: **# 2022-057.**

Description of Case per Public Notice:

Application # **2022-057:** Owner: **VT211, LLC**

Project Summary: Proposal to construct 10 lodging dwellings and one restaurant within the existing structure located within both the Commercial/Residential & Residential Zoning Districts.

Applicable Wilmington Code Sections:

Article II - Sections 222, 223, 224, 226, 227, 228
Article IV - Sections 420, 423, 426, 440, 450 C & E
Article VII - Sections 710 A & B, 720, 721 A, B & F, 722, 730

Notice for a public hearing was published in the Valley News on: **May 19, 2022**

Notice was posted in three public places on: **June 29, 2022**

A copy of the notice was mailed to the applicant on: **June 29, 2022**

A copy of the notice was mailed to the abutters on: **June 29, 2022**

HEARING DATE: July 18, 2022

Appeal period for this Case expires on: September 3, 2022

Approval expires on: August 3, 2024

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

Joseph Cincotta
Stephen Chila
Tiffany Chila
Joseph Garra

EXHIBITS

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

1. Hearing Notice
2. Application (3 Pages)

3. Abutter notice
4. Abutter list (2 pages)
5. Architectural cover page
6. Site layout
7. Level 1 floor plan
8. Level 2 floor plan
9. Level 3 floor plan
10. Level 4 floor plan
11. Elevation plan
12. Elevation by building
13. West/South elevation
14. North/South elevation
15. Interior images (9 pages)
16. Exterior images (6 pages)
17. Engineering plan floor 1
18. Engineering plan floor 2
19. Plot plan
20. Property plan
21. Lighting plot plan

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

Section 227: Plan changes after Receiving a Development Review Board decision

- A. Any substantial alteration or material change (as determined by the zoning administrator) to a plan approved by the DRB shall require reapplication and review by DRB.

Substantial alteration or material change means any change to a Permitted development plan approved by the DRB which may have a significant adverse impact on any findings, conclusion, term or condition of the Project's Permit which may result in significant adverse impact with respect to any zoning criteria. This includes but not limited to site plan and design changes.

- B. For minor, non-substantial changes (as determined by the zoning administrator) not involving substantial change in a site plan, design or other change to a Conditional Use previously addressed in a decision of the DRB, the zoning administrator may issue a Zoning Permit under Article II Administrative approval amendments to the DRB.

Finding of Facts: Agent provided testimony affirming.

Conclusions of Law: Section is met

Section 228: State & Federal Permits & Development Review Board Decisions

- A. Any land development, construction, reconstruction, or Use subject to Act 250 pursuant to 10 VSA 151 shall be subject to the decisions of the Act 250 review & permit process with regards to issues of:
1. Water & air pollution
 2. Availability of sufficient water
 3. Burden on existing water supplies

4. Soil erosion & soil water absorption
5. Impact on Highway, transportation, transit networks and services
6. Burden on educational facilities
7. Burden on municipal and government services
8. Impact on aesthetics, scenic beauty, historic sites, natural areas, wildlife habitats, and or endangered species
9. Conformity with local & regional capability and development plans impact on:
 - a. Town or regional growth
 - b. Agricultural soils
 - c. Productive forest soils
 - d. Earth resources
 - e. Extraction of earth resources
 - f. Energy conservation
 - g. Private utility services
 - h. Cost of scattered development
 - i. Public utility services
 - j. Public investment impact, and
 - k. Local & regional settlement patterns
10. Conformity with local & regional plans or capital facilities programs

In addition to the findings of the Act 250 review, the DRB may apply such other conditions, findings of fact and conclusions of law it deems necessary to ensure zoning ordinance conformity on the above issues.

For all other issues not addressed by Act 250, development projects shall be governed by and subject to the terms of this zoning ordinance including DRB review & permitting process as defined herein.

Land development, construction, reconstruction and Uses may be subject to other Permitting as required by the state & federal governments.

State Permitting agencies include but are not limited to the Agency of Natural Resources, the Department of Labor & Industry, the Department of Health, the Agency of Human Services, the Agency of Transportation, the Agency of Agriculture, Food & Markets, and the Department of Liquor Control.

Federal Permitting includes but is not limited to work in wetlands, rivers and streams, lakes and ponds, and historic properties.

The applicant is responsible for determining need for and obtaining any needed State or Federal required Permits.

The Development Review Board shall include in all decisions a statement of applicant responsibility for obtaining any needed State or Federal required Permits.

Finding of Facts: Agent provided testimony affirming.

Conclusions of Law: Section is met

ARTICLE IV: DISTRICTS & USES

Section 420: Uses

Section 440: Districts & District Requirements

Section 450: Districts

DISTRICT

Finding of Fact: Property is located in two districts; Residential & Commercial/ Residential
Conclusions of Law: District is confirmed & section met.

USES

Finding of Facts: Current use of building is Agricultural, applicant is requesting mixed use of Restaurant & lodging which is a conditional use in Commercial Residential District.

Conclusions of Law: Section 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: Agent provided testimony affirming.

Conclusions of Law: Section 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: Agent provided testimony affirming. Applicants will determine plan to control noise for lodging as all rooms will be self-service.

Conclusions of Law: Section is met.

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

Findings of Fact: Agent provided testimony affirming.

Conclusions of Law: Section 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

F. Character of the Area

Findings of Fact: The purpose of the Commercial/ Residential District

“To encourage clustered economic development while preserving designated open spaces & historic village settlement patterns thus preventing sprawl & roadside strip development. PUD's are encouraged within the commercial district & such types of development must meet the PUD requirements as well as consider physical & environmental limitations, such as flood hazard areas, wildlife habitat, steep slopes & traffic volume & flow.”

Conclusions of Law: Section is met.

Section 722: Conditional Use - Preserving the Character of the Town

A. Preserving the Town's Character: Business development shall, to the extent reasonable and

possible, occur in a manner that preserves the rural & agricultural character and ambiance of the community and the historic downtown.

- B. **Economic Development Contributing to the Character of the Town:** Merchandise or services shall not detract from the historic character and nature of the town as a family destination for tourists and a family focused residential community.
- C. **Development Consistent with the Rural, Agricultural, and Historic Nature of the Town:** Construction, reconstruction, or land development, whether allowed, Permitted, or Conditional shall, to the extent reasonable and possible, reflect and/or compliment the historic nature of the town and the rural & agricultural appearance of the neighborhood & region.
- D. **Formula Businesses:** The visual appearance of Formula Businesses (also known as chain stores, including things such as grocery stores, gas stations, chain drug stores, dollar stores, etc), including signage shall project an appearance harmonious with the character of the rural, agricultural, and historic nature of the town, consistent with the site plan and design guidelines of Appendix I.
- E. **Maximum Square Footage of Retail (2000 square feet):** All retail businesses with a proposed footprint of greater than 2,000 square feet shall require Development Review Board review, written decision & approval in all districts. Stores exceeding the 2,000 square foot maximum may be approved by the Development Review Board in the event that the business is:
 - 1. Is consistent with the unique character & ambiance of the community
 - 2. Is found to be in the best interested of the community.
 - 3. Is the minimum size required to reasonably accommodate the business.
 - 4. Will enhance or preserve the economic base & economic diversity of the town as a whole.
 - 5. Will create economic stability & viability for the community.
- F. **Building Scale Conformity:** Development shall conform to the scale of the established neighborhood.
- G. **Utility Placement:** to preserve the aesthetics & natural beauty of the area, underground utilities are encouraged where possible, particularly in areas of natural scenic beauty and in the HDRD.

Findings of Fact: Will come back to DRB for restaurant review due to SQ footage over 2000 square feet. All utilities will be underground.

Conclusions of Law: Section is met.

SECTION 730: CONDITIONAL USE – SPECIFIC STANDARDS

A. Lighting and Glare: 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.

Findings of Fact: Agent provided testimony that all lighting will be downcasted & on timers. Lighting will comply with Act 250 requirements.

Conclusions of Law: Section is met pending Act 250 permit.

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

Findings of Fact: Agent provided testimony that construct will be 7am-5pm. All construction vehicles will keep ROI clear.

Conclusions of Law: Section is 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 traffic flow & efficiency.

Findings of Fact: Agent stated traffic flow plan will be presented with restaurant application.

Conclusions of Law: Section is 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 unobscured 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: Property will have 72 parking spaces with designated handicapped parking. Loading dock at rear of restaurant. Driveway is designed for emergency access.

Conclusions of Law: Section is met.

E. Road Development: New roads, public and private, shall conform to the town's Highway Ordinance.

Findings of Fact: No new roads, ROI driveway is grown in & will be renewed & maintained.

Conclusions of Law: Section is met.

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: Landscaping plan to be presented with restaurant application.

Conclusions of Law: Section is 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: Runoff management will be complied with Act 250 standards.

Conclusions of Law: Section is 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: Property has fire sprinkler system throughout; property has well & septic.

Conclusions of Law: Section is 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: Agent provided testimony affirming that they will comply with Act 250 requirements.

Conclusions of Law: Section is met.

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

Findings of Fact: N/A

Conclusions of Law: Section is met.

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

Findings of Fact: Agent provided testimony affirming.

Conclusions of Law: Section is met.

The application for a mixed use construction of 10 lodging dwellings & restaurant 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 1-21 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 have plan in place for, property management company/ company associate, to respond within 30 minutes for noise complaint on property after 10pm per noise ordinance.
3. During construction process, work hours are restricted to 7am to 5pm.
4. Final Act 250 permit must be provided to ZA before construction begins.
5. Water tests & sewer permit must be provided to ZA.
6. Per testimony, all utilities must be underground.
7. Agent to present final landscaping plan to ZA.
8. Each unit is permitted for 2 beds per agent testimony provided.

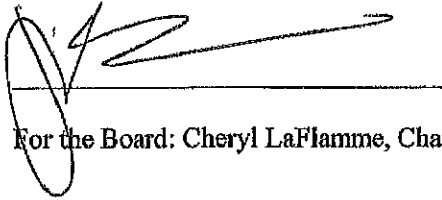
Town of Wilmington, Zoning Administrator reserves the right to monitor compliance with this decision and all decisions issued by the Development Review Board

IN FAVOR of granting the APPROVAL FOR the above referenced application, with whatever restrictions, requirements, limitations or specifications are contained herein:

Cheryl LaFlamme
Diane Abate
Chrystal Holt
Justin Linder
Paul Lockyear
Charles Foster

OPPOSED:

ABSTAINING:



Date: 8/4/2022

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.