

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: **Andrew & Elizabeth Christo**

Owner/Applicant(s) Mailing Address: **64B Bear Lane, Whitingham, VT 05361**

Address of the subject property: **24 West Main Street, Wilmington, VT 05363**

Tax Map: **Parcel ID # 20-20-078.000**

A copy of the request is filed in the office of the Board and is referred to as: **# 2022-059.**

**Description of Case per Public Notice:**

Application # **2022-059:** Owner: **Andrew & Elizabeth Christo**

**Project Summary: Proposal to build a kitchen to produce coffee and donuts, selling them via carry-out. Applicant seeks to utilize a drive-up window for online orders, where there was a former drive-up bank teller window for a previous use within the Village District.**

**Applicable Wilmington Code Sections:**

Article II – Sections: 222, 223, 224, 226  
Article IV – Sections: 420, 423, 440, 450 B  
Article V – Sections: 500, 520, 522, 530  
Article VI – Sections: 602, 610  
Article VII – Sections: 710, 720, 721, 722, 723, 730

Notice for a public hearing was published in the Valley News on: **July 14, 2022**

Notice was posted in three public places on: **July 13, 2022**

A copy of the notice was mailed to the applicant on: **July 13, 2022**

A copy of the notice was mailed to the abutters on: **July 13, 2022**

**HEARING DATE: August 1, 2022**

**Appeal period for this Case expires on: October 6, 2022**

**Approval expires on: September 5, 2024**

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

Andrew Christo  
Elizabeth Christo  
Gretchen Havreluk

**EXHIBITS**

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

1. Hearing Notice
2. Application (4 Pages)
3. Permit Request Summary (6 Pages)

4. Architectural cover pages (3 pages)
5. Site plan
6. Site plan with proposed changes
7. Interior floor plans
8. Interior floor plan with photos 1<sup>st</sup> floor
9. Exterior plans with photos
10. Exterior rear facing
11. Exterior photos
12. Abutter notice
13. Abutter list
14. Flood map
15. Lighting example photo

**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 423 Conditional Uses**

**Section 440: Districts & District Requirements**

**Section 450: Districts**

B)

**DISTRICT**

**Finding of Fact:** Subject property is in the Village district & within the Village Design Review District

**Conclusions of Law:** Section is met.

**USES**

**Finding of Facts:** Current use of property is Retail, requesting change to Mercantile.

**Conclusions of Law:** section is met.

**ARTICLE V: DESIGN REVIEW DISTRICTS- OVERLAY DISTRICTS**

**Section 500: Authority**

**Section 520: Historic Design Review District Purpose**

**Finding of Facts:**

**Conclusions of Law:**

**Section 522: Goals of the Historic Design Review District**

The Site Plan and Design Goals of the Wilmington Historic Design Review District are as follows:

A. To preserve the historic and cultural heritage of the historic downtown.

B. To support maintenance, change and preservation of building and property in accordance with

the design guidelines of this zoning ordinance and consistent with recognized and accepted standards for historic preservation projects.

C. To promote the Use of buildings and property in a manner that benefits the community and individual property owners, while preserving those features that have architectural or historic merit.

D. To attract visitors and encourage tourism by enhancing the visual character as a New England village.

E. To encourage maintenance and preservation of building and property and changes to support a visually attractive village for the pleasure of residents and visitors.

F. To encourage and support economic growth and prosperity within the community while maintaining the New England Character.

G. To encourage public and private investments that may result in a positive contribution to visual harmony and economic vitality, and protect these assets for future generations.

The goals of this District shall be considered by the Development Review Board when considering proposed window replacement.

**Findings of Fact:** Testimony provided by applicant. Applicant looks to help the local economy by purchasing vacant building & opening business that employs 4-6 people.

**Conclusion of Law:** Section is met.

### **Section 730: Development Review Board Site Plan & Design Review Required on Design Review District Development**

**Findings of Fact:** Site plan & layout plans received from applicant.

**Conclusion of Law:** Section is met

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

### **Section 602 (A-C): Lands to Which These Regulations Apply**

These regulations apply to development in all areas of the town identified as special flood hazard in and on the most current flood insurance studies and maps published by the Dept. of Homeland Security, FEMA, and National Flood Insurance Program (NFIP), as provided by the ANR pursuant to 10 V.S.A. section 753. The base flood elevations and floodway limits (zones A1 – A30, AE and AH) provided by the NFIP shall be used to administer provisions of the regulation. If none is provided by the NFIP then information available from the state or federal agencies or other sources shall be obtained and reasonably utilized.

**Finding of Facts:** Subject property doesn't have basement & has purchased flood insurance.

**Conclusion of Law:** Section is met.

### **Development Standards – Flood Fringe Areas Section 610 C (1)**

New construction and existing buildings to be substantially improved shall have the lowest floor, including basement, elevated to or above the base flood elevation or together with attendant utility and sanitary facilities to be designed so that below the base flood elevation & the Structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

**Finding of Facts:** Subject property doesn't have basement. Applicants are contracting dumpster from local company, dumpster will mounted to concrete pad & bear proof. Electrical panels are being raised above BFE.

**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:** 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.

**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 Village District is:

“To 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. Businesses shall be small in scale consistent with the clustered downtown of the historic village.”

**Conclusions of Law:** Applicant’s business will match well with purpose of village district; any changes to exterior will maintain Historic preservation of building.

**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 723: Conditional Use - Preserving the Character of the Town: Historic Preservation**  
(compliance is required for properties in the Historic Design Review District (HDRD))

**A. Historic Structures:**

All Conditional Uses for a certified historic Structure as defined by Internal Revenue code 26 U.S.C. Section 47 (c) and/or recognized in the National Register of Historic Places, or by the Preservation Trust of Vermont shall not engage in land development that will compromise the Structure’s historic status. Every effort shall be made to preserve and enhance the historic features of Structures dating to 1920 or earlier. Preservation and enhancement of historic Structures shall be compatible with the historic character of the town and region.

**Findings of Fact:** Based on the Appendix II listing of the Zoning Ordinance: This property is listed in the National and State Registers of Historic Places, with an original style of Greek Revival. The structure was built in 1835. The proposed land development has the following characteristics which are appropriate to the style and year of construction.

**Conclusions of Law:** This standard is met.

**B. Historic Preservation, Rehabilitation and Restoration.** Historic features and historic Structures shall, to the extent reasonable and possible, be preserved, rehabilitated, or restored. (Preservation, Rehabilitation, Restoration including Reconstruction as defined in Section 723 B of the Wilmington Zoning Ordinance)

Consistent with Section 723 D, criteria to be applied in determining which of these approaches is most appropriate for the structure include the property’s’:

1. Historical significance

2. Physical condition
  3. Proposed Use
  4. Reasonableness of undertaking Preservation, Rehabilitation, or Restoration/Reconstruction
  5. Degree to which it will contribute to preserving or enhancing the character of the community
- Findings of Fact:** proposed renovation is not applicable to provisions. Applicant is adding rear door which will match historic feature of building. Applicant is also restoring previous drive up teller window & inserting sliding glass.

**Conclusions of Law:** This condition is satisfied.

**C, Historic Features:** For reconstruction, historic features of Structures or complimenting the historic features of the region shall be retained or reconstructed.

**Finding of Facts:** The proposed land development is not a reconstruction. In accordance with this Standard the development features must compliment the historic features of the structure or the region. The Board finds the proposed development is consistent with the region.

**Conclusions of Law:** This condition is satisfied.

**D. Criteria for Determining Preservation, Rehabilitation, Restoration/Reconstruction:**

See 732 B above.

**E. Demolition of Historic Structures**

The owner of a historic structure that may reasonably be Preserved, Rehabilitated, Restored/Renovated shall not demolish any historic Structure certified as a historic Structure as defined by Internal Revenue Code 26 U.S.C. Section 47 (c) or listed on any State or Federal Register of Historic Places.

**Finding of Facts:** No demolition is proposed for this structure.

**Conclusions of Law:** This standard is not applicable.

**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:** Applicant will have total of 7 downcast perimeter lights on building. Will match existing lights.

**Conclusions of Law:** Standard 730 A is met.

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

**Findings of Fact:** Applicant will be installing the following signage on property; drive through only signage, enter & exit signage, & will also mark parking lots for customer & staff. Applicant also stated the handicapped parking space will be removed in drive through.

**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:** In addition to the above signage, applicant will install stop sign at drive through for

pedestrian safety.

**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:** Applicant has hired contractor for snow removal & salting of sidewalks. Commercial deliveries will be at rear of building.

**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:** Permits will be provided to ZA; no additional sewer allotment due to no customer seating.

**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:** Applicant is aware of flood hazard district & will comply with all standards.

**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:** Commercial exhaust for kitchen.

**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.

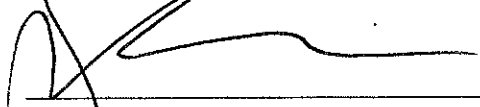
1. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits 1-15 and the testimony provided. Any changes to the plans will require an administrative approval from the Zoning Administrator and/or a review by the Development Review Board, in conformance with the ordinance.
2. All signage must follow HDRD sign ordinances.
3. Following signage must be installed on property:
  - a. Drive through signage
  - b. Enter & exit signage
  - c. Parking lot signage
  - d. Stop sign exiting drive-through before sidewalk
4. Front facing floodlights will need to be altered to meet the following criteria; floodlights must be fully shielded, downcast at 0 degree & 3000k or less to match the surrounding village's warm color.
5. Base Flood elevation must be issued to ZA before permit is issued.
6. Handicapped parking spot to be removed.
7. Wastewater & potable water permits 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:

Cheryl LaFlamme  
Charles Foster  
Diane Abate  
Paul Lockyear

OPPOSED:  
ABSTAINING:

  
\_\_\_\_\_  
For the Board: Cheryl LaFlamme, Chairperson

Date: 9/6/2022

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.*