

TOWN OF WILMINGTON
COVER SHEET
FINDINGS OF FACT ATTACHED

Zoning Permit Application Number:

2023-029

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

4.20.23

Notice was posted in three public places on:

4.24.23

A copy of the notice was mailed to the applicant on:

4.18.23

A copy of the notice was mailed to the abutters on:

4.18.23

Appeal period for this DRB decision expires on:

8.11.23

Approved Permit expires on:

7.10.25

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: **Matt and Veronica Horn, owners – Matterhorn Apothecary Agent**

Applicant(s) Mailing Address: PO Box 1837, West Dover VT 05356

Address of the subject property: **9 North Main St, Wilmington, VT**

Tax Map: parcel # **21-21-30**

A copy of the request is filed in the office of the Board and is referred to as: **Permit #2023-029**

Description of Case per Public Notice

Application # **2023-029**

Application for change of use, structures and signs in the Village District within the Historic Design Review District.

Applicable Code Sections:

Article II- Sections: 222, 223, 224, 226, 227, 229, 232, 233, 272

Article IV- Sections: 420, 423, 440, 444, 450 B

Article V – Sections: 520, 521, 522, 530, 540

Article VII- Sections: 705, 706, 708, 710, 720, 721B, F, 722, 723, 730 A, B, C, D9, F, H, L, 732 J

Article VIII-Sections 830, 831, 832, 833 C, 840, 844, 850, 870, 871

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Appeal period for this Case expires on: _____ 8/10/2023 _____

Approval expires on: _____ 7/10/2025 _____

Date of Public Hearing: **May 15 and June 5, 2023**

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

Veronica Horn
Matt Horn
Karen Molina, on behalf of Group of Ten

EXHIBITS

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

1. Warning of DRB Hearing
2. Application for DRB Review (4 pages)
3. Application for sign (2 pages)
4. Site map
5. Parcel map
6. Flood hazard zone map
7. Proposed roof change garage
8. Photo of present garage
9. Photos of proposed spa and sauna (5 pages)
10. Photo of present garage with proposed new sign
11. Photo of proposed wood for new sign
12. Copy of abutters list with notice mailing date
13. Garage addition and sign change
14. Picket fence design
15. New site plan

SYNOPSIS

Application for permit for Change of Use Expansion, Structures and Signs at 9 North Main St in the Village District with a Historic Design Review District overlay. This permit requires DRB approval for changes to a previous permit.

ARTICLE II: ADMINISTRATIVE PROCEDURES

Section 222 Land Development and Uses Requiring Development Review Board Written Decision and Approval

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 Development Review Board Decision

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

Section 232 Criteria for Obtaining a Sign Waiver from the Development Review Board

Section 233 Dimensional and Sign Waiver Application and View Process of the Development Review Board

Section 272 Who May Attend and Be Heard at A Public Hearing

Finding of Facts: Sections noted outline administrative procedures, definitions, role of the DRB, and responsibility of the applicant. This application was received containing all necessary documents and those in attendance were advised of who may provide testimony during the hearing.

Conclusion of Law: Article II is met.

ARTICLE IV: DISTRICTS & USES

Section 420 Uses

Section 423 Conditional Uses

Section 440 Districts and District Requirements

Section 444 Calculation of Lot Dimensions and Setbacks

Section 450 B District Purposes and Descriptions- Village District (VIL)

Finding of Facts: Subject property is within the Village District (Section 450 B). The property is identified as Tax Map: parcel # **21-21-30**. The primary use is Retail.

Conclusion of Law: Per section 450 B, the proposed use and plans are in compliance with the purposes of the Village District.

ARTICLE V: DESIGN REVIEW DISTRICTS & OVERLAY DISTRICTS

Section 520 Historic Design Review District Purpose

Section 521 Historic Design Review District Boundaries

Section 522 Goals of the Historic Design Review District

Section 530 Development Review Board Site Plan and Design Required on Design Review District Development

Section 540 Site Plan and Design Review Standards

Finding of Facts: Based on the zoning ordinance for the Historic Design Review District, DRB approval is required for any site modification or change of use.

Conclusion of Law: The application received provides detailed information regarding the proposed change of use and site structures. The information provided supports the goals of the Historic Design Review District.

ARTICLE VII: STANDARDS

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

Section 706 Nonconforming Structures on Developed Land/Lot

Section 708 Nonconforming Uses

Findings of Facts: With regard to the specific structures and uses in these sections, the proposed changes are in compliance with these standards.

Conclusion of Law: The proposed use and structures meet the specific 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 applicant states that no vibration will be 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: Testimony provided by applicant states that no noise will be discernible at the property line.

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 was provided by the applicant that they will not allow cannabis use on the property as it is outlawed by Vermont law. Hours of operation for the retail use will be from 10am-6pm. Applicant states that food service hours will be from 12-6 pm Sunday – Thursday and 12-8 pm Friday and Saturday. Applicant testimony that they have changed the fire pit to a smokeless fire pit.

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: The proposed use will not create injurious or noxious damage. Testimony of applicant that they have changed the fire pit to a smokeless fire pit.

Conclusions of Law: This Use Performance Standard is met.

Section 720 Applicability of Conditional Use Standards and Site Plan and Design Guidelines

Findings of Fact: The current use and new retail use is a conditional use in this district.

Conclusions of Law: This Use Standard is met.

Section 721 Conditional Use – General Standards

B - Impact on traffic, roads, highways, transportation systems, pedestrian walkways in the vicinity

Findings of Fact: Applicant testified that they will change the plan of how customers will access the upper land use for display of spas and sauna and will provide a walkway on their land and not use Lisle Hill.

Conclusions of Law: This Use Performance Standard is met.

F – 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: The current use and new retail use is a conditional use in this district. Testimony of the applicants that their use is consistent with the neighborhood.

Conclusions of Law: This Use Standard is met.

Section 722 Conditional Use- Preserving the Character of Town

Section 723 Conditional Use- Preserving the Character of Town: Historic Preservation

Findings of Fact: The current use and new retail use is a conditional use in this district. Testimony of the applicants that their use is consistent with the neighborhood.

Conclusions of Law: This Use Standard is met.

Section 730 Specific Standards

All land development and Uses in all Districts and Overlay Districts shall conform to the following:

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: All lighting will meet this standard.

Conclusions of Law: Standard 730 A is met.

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

Findings of Fact: Testimony of applicant that they will erect a 42 inch fence along the top of the driveway on both sides of the building with a locked gate to maintain a safe environment for adults and children. Spas and sauna will be locked at all times unless actively being shown by an employee.

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: Applicant testified that there will be no use of the roadway for customers to access the spas and sauna. Applicant will provide a planned walkway on their land for safe access to upper level and will also maintain a fence with locked gate at the upper level on both sides of the building.

Conclusions of Law: The decision will be conditioned on the traffic and pedestrian safety precautions noted above. Standard 730 C is conditionally met

D. Commercial Parking and Loading: Commercial parking and loading areas in all districts shall:

9. Safety: Minimize physical hazards, provide safe pedestrian and vehicular movement with unobscured views, especially visibility at intersections, pedestrian safety, convenience, emergency access.

Finding of Facts: Applicant testimony that no use of the roadway will be required.

Conclusions of Law: Standard 732 D9 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 and Screening opportunities to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties include window boxes along the front of the building.

Conclusions of Law: Standard 730 F 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: proposed application does not apply.

Conclusions of Law: Standard 730 H is conditionally met

L. Flood Hazard Protection

Findings of Fact: Not applicable with this application.

Conclusions of Law: not applicable.

Section 732 J Temporary Outdoor Retail

Finding of Facts: With regard to the specific standards outlined in this zoning ordinance, the proposed use is not temporary and is in compliance with these standards.

Conclusion of Law: Standard is not applicable

ARTICLE VIII – SIGNS

Section 830 Permitted Signs (requiring a zoning permit)

Section 831 Types of Signs

Section 832 Number of Signs

Section 833 Size of Signs C Structure Mounted Signs – No Customer Entry and Facing a Public Area

Section 840 Obtaining a Permit

Section 844 Obtaining a Zoning Permit for a Sign

Section 850 Conditional Sign Waivers Requiring Written Decision and Approval from the Development Review Board

Section 870 Sign Standards – Applying to all Signs

Section 871 Sign Design Guidelines

Findings of Fact: Testimony of applicant and Exhibit 10 and 11 sign on garage will be live edge and say “Matterhorn & Reed/Saunas Spa & More.”

Conclusion of Law: Live edge is permitted by this DRB in Exhibit 11 size and type.

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 1-15 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. Business hours will be from 10 am-6pm and food stand from 12-6 pm Sunday – Thursday and 12-8 pm Friday and Saturday.
3. Spas and sauna must be hard-wired for electrical and code compliant.
4. Non-functioning spa and sauna must have no electrical.
5. Two spas must have locking covers and remain locked except with an employee present. Sauna must also be locked unless an employee is present.
6. Upper level along driveway must have a 42 inch tall fence all along both sides of building and included a locked gate.

There is a thirty (30) day appeal period from the date of signature before this Approval becomes final.

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 Approval, FOR the above referenced application, with whatever restrictions, requirements, limitations or specifications are contained herein:

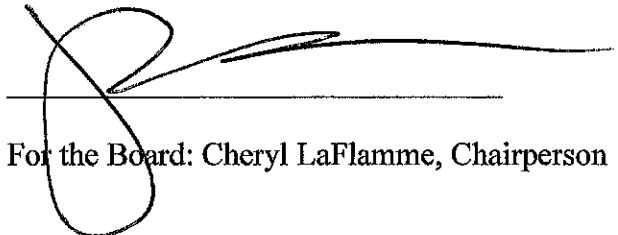
Cheryl LaFlamme
Diane Abate
John Gannon

OPPOSED:

None

ABSTAINING:

None



A handwritten signature in black ink, appearing to be 'Cheryl LaFlamme', written over a horizontal line. The signature is stylized and extends to the right.

Date: 7/10/2023

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.