

TOWN OF WILMINGTON
COVER SHEET
DRB FINDINGS OF FACT ATTACHED

Zoning Permit Application Number:

2023-093

Date of First Hearing:

9.18.23

Public Hearing Notice published in the Deerfield Valley News on:

8.24.23

Notice was posted in three public places on:

8.21.23

A copy of the Notice was mailed to the applicant and abutters on:

8.21.23

Appeal period for this DRB Decision expires on: 11.30.23

Approved Permit (after two years) expires on: 11.2.25

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: Jenevieve Penk & Vincent Yeo

Owner/Applicant(s) Mailing Address: PO BOX 1964, West Dover

Address of the subject property: 12 S Main St

Tax Map: parcel 20-22-23

A copy of the request is filed in the office of the Board and is referred to as: #2023-93

Description of Case per Public Notice: Change of Use to Art Studio, Gallery, and Event Space plus Lounge and Retail

Application is being made for a: **Open an art studio with classes open to the public, operate an art non-profit upstairs and hold special events such as gallery openings, art fairs, poetry nights, etc**

Applicable Wilmington Code Sections:

Article II- 222, 223, 224, 226, 227, 272

Article IV- 420, 423, 424, 440, 450 B

Article V- 520, 522, 530

Article VII- 710, 720, 721, 722, 723, 730 A & F

Article VIII- All

Notice for a public hearing was published in the Valley News on: 8/24/23

Notice was posted in three public places on: 8/21/23

A copy of the notice was mailed to the applicant on: 8/21/23

A copy of the notice was mailed to the abutters on: 8/21/23

Appeal period for this Case expires on: ~~12/30/2023~~

11/30/2023

Approval expires on: 10/30/2025

The following presented testimony as the applicant or on behalf of the Applicant or as an Interested Person:
Jenevieve Penk & Vincent Yeo

EXHIBITS

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

1. Notice of Hearing
2. Cover Sheet
3. Abutters
4. Application (4 pages)
5. First floor diagram
6. Second floor diagram
7. Building diagram
8. Sign Application 2 pages
9. Exterior Renovations (5 pages)
10. Abutter notice

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: All materials were received & reviewed.

Conclusions of Law: Section is met.

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

1. 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.
2. 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: Applicant is aware

Conclusions of Law: Section is met

Section 272: Who May Attend and Be Heard at a Public Hearing

The public may attend all Public Hearings. Any "Interested Person" has the right to be heard at a Public Hearing. Participation in the initial hearing proceedings is a prerequisite to making future Appeals. An Interested Person, their agent, or their attorney may appear at the hearing and be heard on the issue, in either support or opposition, or to raise a point of interest or concern on the issue being heard. Pursuant to 24 V.S.A. § 4465(b), an Interested Person includes:

- A. A group of ten (10) or more voters or property owners who, by signed petition presented to the Board, allege that the decision, proposed action or failures to act will or will not conform to policies, purposes, or the terms of the bylaw, ordinance or plan. The petition shall designate one person to serve as their representative regarding all matters related to the issue.
- B. A person owning title to a property who alleges that the decision, proposed action or failures to act will or will not impose unreasonable or inappropriate restrictions on or potential Use of the property.
- C. A person owning or occupying property in an adjacent neighborhood or property subject to the decision, proposed action or failures to act, who can demonstrate a physical or environmental impact on their interests and who alleges that the decision or proposed action will or will not conform to policies, purposes, or the terms of the bylaw, ordinance, or plan.
- D. The Town of Wilmington having a bylaw, ordinance or plan brought under review.
- E. Any department of the state owning property or with interest in property in the town of Wilmington having a plan, proposed action or failures to act, brought under review and the agency of commerce and community development for the state.

Finding of Facts: No interested parties

Conclusions of Law: Section is met.

ARTICLE IV: DISTRICTS & USES

Section 420 Uses

Section 423 Conditional Uses

Section 424: Secondary 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 is mixed use space. Applicant looking for conditional use for retail & secondary use for entertainment & cultural facility
Conclusions of Law: section is met.

ARTICLE V: DESIGN REVIEW DISTRICTS- OVERLAY DISTRICTS

Section 500: Authority

Section 520: Historic Design Review District Purpose

The basis for the Historic Design Review District is to preserve the beauty, vistas and visual character of the many buildings of historic significance as defined by the National and State Registers of Historic Places dating from the early 19th century. In order to protect these characteristics, it is necessary to ensure that proper attention is given to the historic exterior features of buildings and Structures so as to provide a means by which long term economic prosperity may be supported, property values can be stabilized or improved, and economic well-being of the community protected and fostered.

Finding of Facts: Built in 1830ish; Greek Revival. Applicant is applying for Historical tax credits for restoration of the building. No changes are altering historic features.

Conclusions of Law: Section is met

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: Refurbishing existing building & introducing art galleries & studio to public. Will create employment for 5 staff members. Will create visually active location to support district.

Conclusion of Law: Section is met.

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

Findings of Fact: Site plan & design review completed in meeting.

Conclusion 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: No vibration

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 9 PM and 7 AM and does not significantly detract from or diminish other property's allowed use or land development.

Findings of fact: Events will run until 11pm; no noise to be heard outside of building.

Conclusions of Law: Section 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: no air emissions

Conclusions of Law: Section 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:no injurious or noxious practices

Conclusions of Law: Section is met

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

Conditional Uses are subject to both General and Specific Standards as defined below. Site Plan and Design Guidelines of Appendix I shall be applied to development within the Historic Design Review District and are recommended in all other districts.

The Development Review Board will complete a Site Plan Review and a Design Review as needed to determine conformity with the Standards of this Article VII.

Findings of Fact: Site plan reviewed & verified.

Conclusions of Law: Section is met

Section 721: Conditional Use - General Standards

In all districts, all Conditional Use development shall protect from undue adverse effects: (24 V.S.A. § 4414 (3)(A)). No Land Development or Use shall result in an undue adverse effect on any of the following:

A. The capacity of existing or planned community, municipal or educational facilities

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

C. By-laws and ordinances in effect at the time

D. Utilization of renewable energy resources

E. Air quality

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: Application has no impact on existing utilities & or roadways.

Conclusions of Law: Section is met

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

Land development and Uses in all Districts shall preserve the character of town consistent with its rural and agricultural heritage, conforming to the following:

A. Preservation of the Town's Character: Business development shall, to the extent reasonable and possible, occur in a manner that preserves the rural and 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 and agricultural appearance of the neighborhood and region.

D. Formula Businesses: The visual appearance of Formula Businesses (also known as chain stores, including things such as grocery stores, gas stations, chain drugs stores, dollar stores, etc. See Article X for a complete definition of this term), including signage, shall project an appearance harmonious with the character of the rural, agricultural, and historic nature of the town, reflecting the distinctive and unique character of the town, consistent with the Site Plan and Design Guidelines of Appendix I.

E. Maximum Square Footage for Retail: All retail businesses with a proposed footprint of greater than two thousand (2,000) square feet (for example a 50' long x 40' wide store) shall require Development Review Board review, written decision and approval in all districts. Stores exceeding the two thousand (2,000) square foot maximum may be approved by the Development Review Board in the event that the business:

1. is consistent with the unique character and ambiance of the community
2. is found to be in the best interest of the community
3. is the minimum size required to reasonably accommodate the business
4. will enhance or preserve the economic base and economic diversity of the town as a whole
5. will create economic stability and 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 and natural beauty of the area, underground utilities are encouraged where possible, particularly in areas of natural scenic beauty and in the Historic Design Review District.

Findings of Fact: Testimony provided by application; retail space will be 600 square feet on second floor.

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: Applicant applied for historical tax credit & is not altering historic features of building.

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: Historic features will be preserved.

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: Building is not being reconstructed.

Conclusions of Law: This condition is satisfied.

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

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 will occur.

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: Removing spotlights off front of the building, replacing front lights with downcast scones.

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: removal of front window boxes

Conclusions of Law: Section is met.

ARTICLE VIII SIGNS

ARTICLE VIII: SIGNS

Section 801: Purpose

Section 802: Application in District

Section 831: Types of Signs

Section 832: Number of Signs B, C, D

Section 833: Size of Signs

Section 850: Conditional sign waivers requiring written decision & approval from the DRB

Section 870: Signs Standards: Applying to all signs

Section 871: Sign Design guidelines

Section 873: Setback & height limitations

Section 874: Calculation of area & number of signs

Findings of Fact: Applicant is replacing current sign with 48”x24”x4” sign – signage will read “Arthouse” & will be lit with 48” dual sided led downcast light

Conclusion of Law: Article VIII is met.

The application for 2023-093 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 1-10 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. When legal right of way access is granted for handicapped accessible ramp; applicant has been advised to bring ZA for final approval; DRB has given primary approval.
3. Hours are 9am to 11pm daily

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

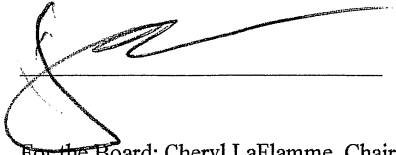
Charles Foster

Chrystal Holt

John Gannon

OPPOSED:

ABSTAINING:



Date: 10/30/2023

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.
