

**TOWN OF WILMINGTON
COVER SHEET
DRB FINDINGS OF FACT ATTACHED**

Zoning Permit Application Number:

2023-113

Date of First Hearing:

2.5.24

Public Hearing Notice published in the Deerfield Valley News on:

1.18.24

Notice was posted in three public places on:

1.12.24

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

1.12.24

Appeal period for this DRB Decision expires on:

2.23.26

Approved Permit (after two years) expires on:

3.12.26

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: **Supergirl LLC/Nebelski**

Owner/Applicant(s) Mailing Address: PO Box 1071, Wilmington, VT 05363

Address of the subject property: **155 Rte 100 N, Wilmington, VT**

Tax Map: parcel # **21-20-10**

A copy of the request is filed in the office of the Board and is referred to as: **#2023-113**

Description of Case per Public Notice

Application # **2022-113**: Owner: Super Girl LLC/ Nebelski

Applicant proposes a change of use from Hair Salon to a Mixed Use for Two Apartments with Lodging Use.

Applicable Code Sections:

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

Article IV- Sections: 420, 423, 424, 440, 450 E

Article VII- Sections: 710, 720, 721, 722, 730 A, B, C, D, F, H

Notice for a public hearing was published in the Valley News on: **1/18/2024**

Notice was posted in three public places on: **1/12/2024**

A copy of the notice was mailed to the applicant on: **1/12/2024**

A copy of the notice was mailed to the abutters on: **1/12/2024**

Appeal period for this Case expires on: 3/23/24

Approval expires on: 2/23/26

Date of Hearing: 5 Feb 2024

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

Melissa Nebelski, Applicant

EXHIBITS

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

1. Town of Wilmington Cover Sheet
2. Notice of Hearing
3. Application for DRB Review (4 pages)
4. Layout drawings for parcel and interior (3 pages)
5. Image with parcel lines
6. Abutter List and postage date for notice mailing

SYNOPSIS

Applicant proposes a change of use from Hair Salon to a Mixed Use for Two Apartments with Lodging Use

ARTICLE II: ADMINISTRATIVE PROCEDURES

Section 222 Conditional Uses

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 a Development Review Board Decision

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. Application was received containing all necessary documents at the time of the hearing. Applicant testified they understand this article and did not have any questions.

Conclusion of Law: Article II is met.

ARTICLE IV: DISTRICTS & USES

Section 420 Uses

Section 423 Conditional Uses

Section 424 Secondary Uses

Section 440 Districts and District Requirements

Section 450 E District Purposes and Descriptions- Commercial/Residential District (COM/RES)

Finding of Facts: Subject property is within the Commercial- Residential district (Section 450 E). The property is identified as Tax Map parcel #21-20-10. The primary use is currently as a Hair Salon and this application seeks a change of use to Mixed Use for two apartments with both lodging use and dwelling use. The applicant testified that mixed use for the building was ideal so that either unit in the building could be used for the purpose of a long-term dwelling or for short term rental.

Conclusion of Law: A dwelling is an allowed use in this district. Mixed Uses and Lodging are Conditional Uses that require a review and written approval from the DRB within the Commercial/Residential district. Secondary Uses are also permitted if they meet the requirements listed in Section 424.

ARTICLE VII: STANDARDS

Section 710 Use Performance Standards

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

Section 721 Conditional Use- General Standards

Section 722 Conditional Use- Preserving the Character of the Town
Section 730 Specific Standards A, B, C, D, F, H

Section 710: Use Performance Standards

A. Vibration: No continuous, permanent, ongoing, or frequent vibration that is discernible at the property line.

Findings of Fact: There is no indication that vibrations will be produced, and applicant testifies there will be no vibrations.

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: Applicant testifies there will be no noise between the hours of 9pm and 7am.

Additionally, the applicant testified that they live in the area and if any noise complaints are received, they would be available to personally visit the property to address the noise issue.

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: The applicant does not propose any commercial operation at the property at this time.

Conclusions of Law: This Use Performance Standard does not apply.

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: Applicant testifies there will be no injurious or noxious practices. No part of the applicant's proposal indicates injurious or noxious practices.

Conclusions of Law: This Use Performance Standard 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. 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: Applicant's requested change of use does not appear to create any adverse effect on the general standards listed in this section. Additionally, applicant testified that these general standards are met.

Conclusions of Law: Section 721 is met.

SECTION 722: CONDITIONAL USE – PRESERVING THE CHARACTER OF 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: The applicant proposes no changes to the exterior of the building, and her testimony suggested that the mixed use, if approved, would benefit the town by providing the option for both short term lodging and long-term dwelling options in the units within this property. D, E, F, & G are not applicable.

Conclusions of Law: Standard 722 is met.

SECTION 730: CONDITIONAL USE – SPECIFIC STANDARDS

A. Lighting and Glare: All exterior lighting 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. In HDRD and Village District exterior lighting must be consistent with historic character of the commercial area of the village.

Findings of Fact: Applicant proposes no new lighting for this change of use. The applicant testified that the existing lighting is sufficient for safe entry and exit from the units in the building.

Conclusions of Law: Standard 730 A is met.

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

Findings of Fact: Applicant testified that the Fire Marshall was contacted last year when one of the units was being considered for short term rental. Per the zoning administrator, a Short-Term Safety sheet must be completed by the applicant and submitted to the zoning administrator in order for the permit to be issued. Additionally, the applicant testified to a maximum occupancy of 6 people in the building- 4 people in the 2-bedroom unit and 2 people in the studio unit.

Conclusions of Law: In order for Standard 730 B to be met, it is the opinion of this DRB that an inspection by the Fire Marshall is warranted to ensure safety of both long-term and short-term tenants on the property, and therefore makes it a condition required for this change of use permit.

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: There is no evidence based on the applicants testimony or the maps of the parcel that any traffic or pedestrian safety issue is present.

Conclusion of Law: Standard 730 C is met.

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

1. Provide off-street parking
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 testified that the property can currently support more parking spaces that required, with space for 2 cars to park in the front of the building, and 6 cars to park in the rear.

Conclusions of Law: Standard 730 D is met.

F. Landscaping, Screening and Buffer Areas: As defined in Section 722(A) development shall "preserve the rural and agricultural character and ambiance of the community". Natural features characteristic of the town's rural and agricultural character shall be used in Landscaping and Screening to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

Finding of Facts: The applicant does not propose any changes to the landscaping or screening at this time.

Conclusions of Law: The existing property "as is" meets Standard 730 F.

H. Wastewater and Potable Water: Pursuant to 24 V.S.A. § 4414 (13) the Zoning Administrator may issue an initial Permit conditioned upon receipt of evidence of a wastewater and potable water supply Permit, if none is provided with the submitted application. A final Permit may be issued by the Zoning

Administrator after receiving evidence that a Permit has been issued, as applicable, under chapter 64 Title 10. Development Review Board decisions shall instruct the applicant of their responsibility in obtaining state and federal Permits and may condition their decision on obtaining such a Permit if none has been obtained.

Finding of Facts: The applicant testified to speaking with the town's wastewater manager John Lazelle last year when discussing the short-term rental unit in the building.

Conclusions of Law: In order to meet Standard 730 H, it is the opinion of this DRB that an updated approval be received in writing from the wastewater manager with this change of use permit. (see below for conditions).

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 and the testimony provided. Any changes to the plans will require administrative approval from the Zoning Administrator and/or a review by the Development Review Board, in conformance with the ordinance.
2. Fire Marshall Inspection of the property is required to ensure building safety.
3. Updated written approval for water/wastewater allocation from the Wastewater Manager to ensure proper allocation for the mixed-use permit.
4. Short-Term Rental Safety Sheet to be completed and submitted to the Zoning Administrator.

If unused, this Approval expires 2 years from the date of issue. A request for extension may be made in writing to the Development Review Board before the expiration date. Such request shall be in the form of an APPLICATION FOR EXTENSION.

There is a thirty (30) day appeal period from the date of signature before this Approval becomes final. In addition, all fees must be paid and a Zoning Permit *must* be issued prior to the commencement of any work requested in this application. When a Zoning Permit is issued, there is an additional fifteen (15) day appeal period before the Permit becomes final. Work may commence when the Permit has been issued and all Appeal periods have ended.

This approval ***does not relieve you***, as applicant, from obtaining any and ALL applicable State and other local permits.

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:

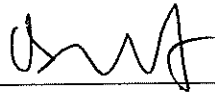
Charles Foster
Chrystal Holt
Diane Abate
John Gannon

OPPOSED:

None

ABSTAINING:

None



Date: 2/23/24

For the Board: Charles Foster, Vice 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.