

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

Zoning Permit Application Number:

2023-139

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:

1.17.24

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

1.17.24

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 permit was made to the Board by: Nicholas Johnson

Owner/Applicant(s) Mailing Address: 75 Tannery Road, Southwick, MA 01077
Address of the subject property: 2 Lisle Hill, Wilmington VT

A copy of the request is filed in the office of the Board and is referred to as: **#2023-139.**

Description of Case per Public Notice: Date of Hearing Feb 5th, 2024

Application # **2023 -139** Owner: Nicholas Johnson
Parcel #: 21-21-29

1. Application is being made for permit #2023-139 for a change of use from single family residential to mixed use residential & lodging and for exterior improvements which includes window and door replacements at 2 Lisle Hill Road. This permit requires Development Review Board approval as 2 Lisle Hill is considered a contributing property within the Historic Design Review District overlay. In addition, the change of use is a Conditional Use within the Village District and requires DRB written approval.

Include but are not limited to the following Wilmington Code Sections:

Article II- 222, 223, 224, 226

Article IV- 450

Article V: 500, 510, 520, 530, 540

Article VII- 710, 720, 721, 722, 723, 730

Notice for a public hearing was published in the Deerfield Vally News on: **1/18/24**

Notice was posted in three public places on: **1/17/24**

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

A copy of the notice was mailed to the abutters on: **1/17/24**

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

Approval expires on: 2/23/26

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

EXHIBITS

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

1. Town of Wilmington Cover Sheet – (1) page
2. Copy of the Warning of a DRB Public Hearing – (1) page
3. Town Of Wilmington DRB Hearing and Zoning Application (4) pages

4. Parcel Lines – Hand drawn sketch of property boundary and building footprint (1) page
5. Photo Image – Exterior siding (1) page
6. Image of JELD-WEN Double hung, two over two simulated divided lite, product sheet. (1) page
7. Floor Plans First and Second Floor – hand drawn sketches (2) pages
8. DFS Short Term Rental Safety, Health and Financial Obligations Check List, (1) page
9. Abutter list (1) page
10. Image of wood stile and rail door with vision lites.

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

District:

- VIL = Village

In addition, these three (3) zonings overlays apply:

- HDRD = Historic Design Review District (Article V)
- VDRD = Village Design Review District (Article V)

Section 450: District Purposes and Descriptions

Village District (VIL)

1. Purpose: 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.

Building Structures will be reflective of the historic nature of the town.

The Historic Design Review District, as defined in Article V, is included in this district. Some of the parcels in the village are also subject to the Historic Design Review District Guidelines in Article V.

Site Criteria – Village District inside the Historic Design Review District:

Density Limits	Unlimited
Structures/Uses Per Lot	Unlimited
Dimensional Requirements - New Lots	
Minimum Lot Size:	1/8 acre
Minimum Lot Frontage:	40 ft
Structure Height (Max):	38 ft to the highest point of the ridge line All Structures over 24 feet from average grade to the eave line or 38 feet to the ridge line are subject to Development Review Board written decision and approval. *
Setback-Front (Min):	0 ft Measured from edge of the actual or proposed road right-of-way to the dripline for 0 setback
Setback-Side/Rear (Min):	0 ft Measured from the dripline.

Permitted Uses, Village District:

Single Family Dwelling

Conditional Uses, Village District: (Requiring Development Review Board written decision and approval and a zoning Permit)

Lodging > two (2) guest rooms: The rental of bedrooms for overnight accommodations. Meals may be provided to the general public.

Mixed Use: Any combination of Permitted or Conditional Commercial and Residential Uses allowed in the district.

- Permitted Use - Single Family (3) three bedrooms.
- Conditional Use - Lodging (3 bedroom - short term)

ARTICLE IV:

Findings of Fact: The project includes mixed use, residential and lodging. Lodging is a Conditional Uses within the Village District

Conclusion of Law: *Lodging Use* requires DRB approval and is subject to review under Section 710: Use Performance Standards, Section 720: Conditional Use Standards, Section 721: General Standards.

ARTICLE V: DESIGN REVIEW DISTRICTS- OVERLAY DISTRICTS

Section 500: Authority

Within the **Village Design Review** District and the **Historic Design Review** District no Structure may be erected, reconstructed, altered, restored, moved, demolished or changed in Use or type of occupancy, except as otherwise provided for in Section 531 (A) & (B) of this Article, without a written decision and approval of the plans by the Development Review Board, subject to Site Plan and Design Review and administrative approval by the Zoning Administrator as provided for within this zoning ordinance pursuant to 24 VSA § 4464 (C).

Section 510: The basis for a **Design Review District** is to preserve the natural beauty, vistas and the visual character of the Village of Wilmington. The visual aspects of the Design Review Districts represent an important asset to the community by providing a source of pleasure for both residents and visitors and contributing to the economic development of the community.

Section 520: Goals and Purpose of the Historic Design Review District

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.

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.

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

As required by §4414(1)(E), no Structure in any Design Review District (Historic or Village), “may be erected, renovated, substantially altered, restored, moved, demolished, or changed in Use or type of occupancy without a written decision and approval of the plans by the appropriate municipal panel.” (The Development Review Board).

Section 540: Site Plan and Design Review Standards

- A. All development and land improvements within a Design Review District are subject to the Standards as defined in Article VII as well as any applicable standards as set forth in Article VI Flood Hazard Area, Article VIII Signs, and Article IX Telecommunications.
- B. All development and land improvement within the Village Design Review District shall preserve the character of the village and conform to the Goals of this District as defined in Section 513.
- C. All development and land improvements within the Historic Design Review District shall conform to the Site Plan and Design Guidelines of Appendix I to the extent reasonable and possible to satisfy the intent of this ordinance and preserve, rehabilitate, or restore the historic Structures of the town as defined in Sections 730, 731, and 732 of this ordinance.

ARTICLE V:

Findings of Fact: Applicant provided images of their proposed window and door replacements. The windows are a simulated divided lite two over two, and the door is a stile and rail wood door with vision lites, both are in character for the building and historic district. The applicant is also making minor ordinary repairs to the exterior, and he testified that the repairs will be 'in kind' and will not adversely alter the current appearance.

Conclusion of Law: Article V is met. The proposed exterior changes are in keeping with the historic character of the village.

ARTICLE VII: STANDARDS

Section 710: Use Performance Standards

Pursuant to 24 V.S.A. § 4414(5) Performance Standards, the following standards shall apply to all Uses and land development in the town.

- A. Vibration: No continuous, permanent, ongoing, or frequent vibration shall be produced which, when transmitted, is discernible at the property line without the aid of instruments.

Temporary vibration created during land development should be limited to daylight hours to preserve quality of life in neighboring properties.

- B. Noise: continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation (in the judgment of the Development Review Board) must not exist at the property boundary line. Recurring periodic or intermittent noises in excess of that of a normal lawn mower (in the judgment of the Development Review Board) at the property line is allowed provided it does not occur between the hours of nine (9) PM and seven (7) AM, and does not significantly detract from or diminish other property's allowed Use or land development.

Temporary noise created during land development should be limited to daylight hours to preserve quality of life for neighboring properties.

- C. Air Emissions for Commercial Operations: There shall be no emission of dust, ash, smoke or other particulate matter:

1. Which can cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity
2. Which can cause contamination of the subject property or beyond the property boundaries
3. Which is composed of solid or liquid particles in concentrations exceeding current state authority standards
4. Which causes emission of non-farming, odorous matter in such quantities, as determined to be offensive.

- 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 may cause injury or damage to human or animal health, vegetation, or property.

Findings of Fact: Given the nature of residential and lodging use, and applicant testimony the new occupancies will not create Vibration, Noise, or Air Emissions as noted by standards above. In the event there are noise complaints caused by guests, they will be promptly addressed by the applicant or applicant's designated property host/manager. Applicant testified contact information will be made clearly visible and the applicant and/or property manager will be reachable 24/7.

Conclusions of Law: The Section 710 Use Performance Standards are 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.

The Development Review Board shall utilize the Listing of Structures in the State and Federal Registers of Historic Places (Appendix II) to determine the historical significance of all pre-existing Structures seeking written decision and approval for alteration, renovation or change.

The Development Review Board shall require conformity with Section 732 within the Historic Design Review District.

SECTIONS 721: GENERAL STANDARDS

In all districts, all Conditional Use development shall protect from undue adverse effects. 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. 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: Based on the proposed use, minimal changes to the property, exhibits presented and testimony, the board finds no significant changes that would impact General Standards A-F above.

Conclusion of Law: The Section 721 General Standards are met.

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: Based on the proposed use, minimal changes to the property, exhibits presented and testimony, the board finds that these changes preserve the town's character, add to the economic development of the town by promoting tourism and visitors to the town and maintains the historic nature of the town. Conditional Uses D – G are not applicable to this application.

Conclusion of Law: The Section 722 Conditional Uses A, B & C are met.

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 as a contributing property in the Wilmington Historic Village in the National and State Registers of Historic Places.

Conclusions of Law: The Section 723 A Conditional Use is met. Proposed changes preserve the villages and buildings of historic nature.

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

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

Findings of Fact: Window and door replacement, minor repairs to exterior are in keeping the Historic Zoning Ordinance.

Conclusions of Law: The Section 723 C Condition is met. Proposed changes preserve the villages and buildings of historic nature.

SECTION 730: CONDITIONAL USE – 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: Applicant testified they do not plan to add new lighting. They do plan to replace old under soffit lights with new ones.

Conclusions of Law: The Section 730 Standard is met. The replacements fixtures under the porch would be acceptable to the board since these will be fully shielded and downcast and meets the standard.

Note: If a new light fixture is to be added, applicant has been instructed to meet with the zoning administrator to review light fixture location and fixture selection to make sure it meets the zoning standards for fully shielded and down cast (dark sky compliant) and is not mounted to impair driver or pedestrian vision or be a nuisance to other property owners and tenants.

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

Findings of Fact: Based on testimony and the nature of ordinary occupancy there does not appear to be potential safety hazards.

Conclusions of Law: The Section 730 B Standard 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 flow and efficiency.

Findings of Fact: Based on scope of work presented there are no changes or impact to traffic.

Conclusions of Law: The Section 730 C Standard 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.

Findings of Fact: The current driveway allows a maximum of three cars for residents and guests.
Conclusions of Law: Section 730 D is not applicable.

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: On review of the documents submitted to the DRB and applicant testimony, there are no proposed changes to the landscaping.
Conclusions of Law: Section 730 F is not applicable. Applicant was made aware that changes to the landscape may require resubmitting to the DRB for a separate review.

G. Land and Water Management: [complete]

Findings of Fact: [complete]
Conclusions of Law: Section 730 G is not applicable.

H. Wastewater and Potable Water: A permit may be issued upon receipt of evidence there is a wastewater and potable water permit. If not 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: The applicant testified they have been approved for the wastewater and water supply permit. Applicant will need to provide copy of permit for record.

Conclusions of Law: Section 730 H will be met upon submission of a waste and water permit to the Zoning Administrator.

I. Natural Resources and Features: [complete]

Findings of Act: [complete]
Conclusions of Law: Section 730 I is not applicable.

J. Wildlife Protection: There is no adverse impact on wildlife habitats or corridors.

Findings of Fact: Given limited scope in town, this project will not have an impact to wildlife habitats or corridors.

Conclusions of Law: Standard 730 J is not applicable.

K. Shoreland Protection: [complete]

Findings of Fact: This project is not located within a Shoreland to a body of water of greater than 10 acres.

Conclusions of Law: Section 730 K is not applicable.

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

Findings of Fact: Property is not in a Flood Zone.

Conclusions of Law: Section 730 L is not applicable

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

Findings of Fact: Historic Structures are exempt.

Conclusions of Law: Section 730 M is not applicable.

N. Technical Review Costs: Applicant may be required to pay reasonable costs of technical review.

Findings of Fact: [complete]

Conclusions of Law: Section 730 N is not applicable.

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 the 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. Submit documentation of a Fire Marshall Inspection of the property is to the zoning officer prior to issue of a permit to ensure property meets the required to building safety.
3. Submit updated written approval for water/wastewater allocation from the Wastewater Manager to ensure proper allocation for the mixed-use permit.
4. MRT Taxes must be collected by all short-term reservations. If reservations are not completed through an Online Travel Agency (OTA) that submits on owner's behalf, the owner must file directly monthly through VT Department of Taxes.

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:

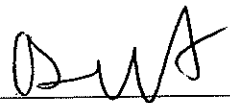
Charles Foster
Diane Abate
John Gannon

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.