

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: Melissa Nebelski Super Girl LLC

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

Address of the subject property: 157 Route 100

Tax Map: 21-20-9

A copy of the request is filed in the office of the Board and is referred to as: #2024-007

**Description of Case per Public Notice:**

Application # 2024-007: Owner: Melissa Nebelski Super Girl LLC

Application is being made for a: **Change of use adding Dwelling, two family, to multiple existing uses on lot in the Commercial/Residential District**

Applicable Wilmington Code Sections:

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

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

Article VII- 710, 720, 721, 730 A, B, D

Notice for a public hearing was published in the Valley News on: 2/15/24

Notice was posted in three public places on: 2/12/24

A copy of the notice was mailed to the applicant on: 2/12/24

A copy of the notice was mailed to the abutters on: 2/12/24

Appeal period for this Case expires on:

5/3/2024

Approval expires on:

4/3/2026

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

**EXHIBITS**

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

1. Cover Sheet
2. Application (4 pages)
3. Site Map
4. Wastewater permit
5. Scope of Work
6. 2<sup>nd</sup> floor layout
7. Apartment 1A floorplan
8. Apartment 1B floorplan
9. Apartment 2A Floorplan
10. Apartment 2B floorplan
11. 1<sup>st</sup> floor access plan
12. Existing stairs plan

**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 exhibits collected & verified.

**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 alternation 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:** Plans reviewed for 2<sup>nd</sup> floor & applicant is aware to bring plan changes to ZA.

**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:** n/a

**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**

E)

**DISTRICT**

**Finding of Fact:** Subject property is in Commercial & Residential District

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

## **USES**

**Finding of Facts:** Current use mixed use, new use is dwelling

**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:** No vibration on property

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

**B. Noise:** Continuous, permanent, ongoing or frequent noise in excess of that of a normal conservation 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:** applicant is aware of noise regulations

**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:** not applicable

**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:** not applicable

**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 plans & exhibits were 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:** No land development or additional development

**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:** All utilities are existing- long term apartments will have positive impact on Wilmington.

**Conclusions of Law:** The proposed land development meets the requirements of Section 722

#### **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:** No new lighting

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

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

**Findings of Fact:** all parking will be rear on the building for safety

**Conclusions of Law:** Section 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:** 2 designated spots per apartment

**Conclusions of Law:** Section is 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.

**Findings of Fact:** Snow & ice removal plan in place; no commercial operations.

**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:** no changes at this point

**Conclusions of Law:** Section 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:** Updated permits to be issued to ZA.

**Conclusions of Law:** Section is met

The application for Change of use adding Dwelling, two family, to multiple existing uses on lot in the Commercial/Residential District is approved with the following conditions, restrictions, requirements, limitations and specifications.

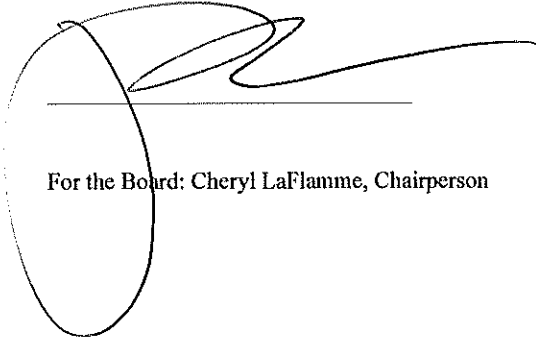
1. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits 1-13 and the testimony provided. Any changes to the plans will require an administrative approval from the Zoning Administrator and/or a review by the Development Review Board. in conformance with the ordinance.
2. Applicant must provide wastewater permit to ZA before zoning permit is issued.
3. Applicant must provide Potable water permit to ZA before zoning permit is issued.

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:



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Date: 4/3/2024

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).

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*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.*

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