

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

Smith
14 Tanhock trail

Zoning Permit Application Number:

2024-102

Date of First Hearing:

7.15.24

Public Hearing Notice published in the Deerfield Valley News on:

6.27.24

Notice was posted in three public places on:

6.24.24

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

6.24.24

Appeal period for this DRB Decision expires on:

9.15.24

Approved Permit (after two years) expires on:

8.20.26

**TOWN OF WILMINGTON
DEVELOPMENT REVIEW BOARD**

WILMINGTON, VERMONT 05363

A request for a permit was made to the Board by: **Kevin and Kristie Smith**

Owner/Applicant(s) Mailing Address: 107 Devonwood Lane, New Canaan CT

Address of the subject property: 14 Tarheel Trail, Wilmington, VT 05363

Tax Map: parcels # 02-4-76 & 02-4-78

A copy of the request is filed in the office of the Board and is referred to as: **Permit #2024-102**

Description of Case per Public Notice

Application # **2024-104**

Lot merger and five (5) Bedroom Short-Term Rental Use.

Applicable Code Sections:

Article II- Sections: 221, 222, 223, 224, 226, 227, 271, 272

Article III - BOUNDARY LINES AND SUBDIVISION – Section 310 Boundary Line
Adjustment and Merged Lots

Article IV- Sections: 420, 440 & 450 C

Article VII- Sections: 710, 720, 721, 722, 730 D, H

Notice for a public hearing was published in the Valley News on: **6/27/2024**

Notice was posted in three public places on: **6/24/2024**

A copy of the notice was mailed to the applicant on: **6/24/2024**

A copy of the notice was mailed to the abutters on: **6/24/2024**

Appeal period for this Case expires on: 9/14/2024

Approval expires on: 8/14/2026

Date of Public Hearing: **July 15, 2024.**

The following presented testimony as the Applicant:

Kevin and Kristie Smith.

EXHIBITS

The following Exhibits were placed into evidence by the Applicant:

1. DRB Cover Sheet (1 page)
2. Town of Wilmington, Warning Letter (1 page)
3. Application for DRB Review (3 pages)
4. DFS Short Term Rental Safety, Health and Financial Obligations Check List (1 page)
5. CO from DFS State of Vermont
6. Approval Letter from State of Vermont Department of Environmental Conservation – Drinking water and Ground water Protection (1 page)
7. State of Vermont Department of Environmental Conservation- Wastewater and Potable Water Supply Permit (3 pages)

8. Plans, Elevations and Sections (12 pages)
9. Trinity Engineering Civil Drawing – Wastewater and Potable Water Design Supply (1 page)
10. Hand Sketch of parking (1 page)
11. Transfer of Ownership for each property (4 pages)
12. List of abutters (2 pages)

SYNOPSIS

The applicant is seeking to merge two adjoining parcels into one and seeks approval for merging the two lots and adding a Short-Term Rental Use of an existing (5) five-bedroom house also used for personal use.

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 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. 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: Conditions met.

ARTICLE III: Section 310: Boundary Line Adjustment and Merged Lots

Boundary Line Adjustment is a method of adjusting boundaries of adjacent lots without creating an additional lot and which does not cause any parcel of land involved to become nonconforming.

Boundary Line Adjustments shall be issued a Zoning Permit by the Zoning Administrator provided:

- A. A survey, prepared by a Vermont licensed surveyor is provided identifying the dimensions of all lots to be created or altered and the location of any road, highway, waterway, easement or right-of-way, and
- B. All resulting lots satisfy all requirements of the districts in which they lie, and
- C. On a nonconforming lot, the Boundary Line Adjustment does not increase the degree of nonconformity.

Finding of Facts: Based on the Zoning Ordinance, to alter boundary lines a legal land survey is required. The applicant has a site plan but not a legal land survey.

Conclusion of Law: Testimony given by the zoning administrator waived the zoning requirement for a land survey.

ARTICLE IV: DISTRICTS & USES

- Section 420 Uses
- Section 440 Districts and District Requirements
- Section 450 C District Purposes and Descriptions –Residential (RES)

Finding of Facts: Both subject properties are within the Residential District (Section 450 C). The properties are identified as Tax Map parcel # 02-4-76 & 02-4-78.

Conclusion of Law: In a Residential District Zone, a Short -Term rental with five or more guest rooms is a conditional use requiring DRB approval and must meet conditions under Article VII.

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 D & 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: Applicant testified that there will be no continuous, permanent, ongoing or frequent vibrations. Use of property for dwelling and rental will be ordinary and will not be a source of vibration.

Conclusions of Law: This 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 testified that there would be noise in violation of this section. Use of property for dwelling and rental will be ordinary and will not be a source of unwanted noise.

Conclusions of Law: This 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: Applicant testified that there would be no air emissions in violation of this section. Use of property for dwelling and rental will be ordinary and will not violate air emissions.

Conclusions of Law: This 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: Applicants testified that there would be no injurious or noxious practices.

Conclusions of Law: This section is met.

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

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

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

Finding of Fact: The site plan was reviewed and verified.

Conclusions of Law: This section is met.

Section 721: General Standards

The proposed use shall protect against adverse impact on:

- A. Community, Municipal or Educational Facilities
- B. Traffic on Roads and Highways
- C. Bylaws and Ordinances in Effect
- D. Utilization of Renewable Energy & Natural Resources

E. Air Quality
F. Character of the Area

Findings of Fact: Based on the proposed use, the applicant's testimony and the exhibits, there will not be any impact on A-F above.

Conclusions of Law: This 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:

1. **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.
2. **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.
3. **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.
4. **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.
5. **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:
 - is consistent with the unique character and ambiance of the community
 - is found to be in the best interest of the community
 - is the minimum size required to reasonably accommodate the business
 - will enhance or preserve the economic base and economic diversity of the town as a whole
 - will create economic stability and viability for the community
6. **Building Scale Conformity:** Development shall conform to the scale of the established neighborhood.
7. **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.

Finding of Facts: Based on the proposed use, the applicant's testimony and the exhibits, the proposed use will be consistent with the Town's rural and agricultural heritage and conform to the standard of this section.

Conclusion of Law: This section 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:** 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.

Findings of Fact: The applicant proposes no new lighting.

Conclusion of Law: Section 730 A is met.

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

Finding of Fact: Based on the applicant's testimony and the nature of the proposed use, there does not appear to be any potential safety hazards.

Conclusions of Law: Section 730 B is met.

D. Commercial Parking and Loading:

Pursuant to 24 V.S.A. § 4414(4) All commercial parking and loading areas in all districts in the town shall adhere to the following standards:

1. **Parking Spaces Required:** With the exception of the Historic Design Review District, for every building hereafter changed in Use, erected, or altered or extended in such a way as likely to increase the need for more parking, there shall be off-street parking spaces as set forth below.
2. **Size of Parking Spaces:** Parking space size shall be a minimum of ten (10) feet by eighteen (18) feet. Smaller parking spaces are allowed only where circumstances calling for added spaces outweigh the risks and public inconvenience of smaller spaces. Special consideration should be given to safety, pedestrian, and disabled persons concerns when smaller spaces are allowed.
3. **Minimum Number of Spaces:** The minimum number of required spaces are:
 - i. **Dwelling, Multi-Family:** Two (2) parking spaces for every Dwelling unit.
 - ii. **Lodging:** One and one-half (1.5) parking space for every guest bedroom.
 - iii. **Multi Business Centers and Offices:** One (1) parking space for every four hundred (400) square feet of business or office space.
 - iv. **Retail Business:** One (1) parking space for every two hundred (200) square feet of retail area.
 - v. **Restaurant, Bar, Lounge, Entertainment / Cultural Facility:** One (1) parking space for every three (3) persons Permitted for occupancy by the Vermont Department of Labor and Industry.
 - vi. **Manufacturing:** One (1) parking space per employee per shift.
4. **Drive-up Windows:** No waiting in the public ROW
5. **Minimize visual impact of parking and loading areas**
6. **Buffer parking areas if needed for safety or aesthetics**
7. **Public road access:** minimize traffic interruption and provide for auto and pedestrian safety
8. **Rainwater, Snow and Ice Removal/Storage:** plan for snow/ice removal, runoff and 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 Fact: Applicant testified that the current driveway allows for a maximum of (6) six cars.

Conclusions of Law: Section 730 D is met.

CONDITIONS:

This 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 an administrative approval from the Zoning Administrator and/or a review by the Development Review Board, in conformance with the ordinance.

If unused, this Approval expires 2 years from the date of issue. A request for extension may be made by 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.

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:

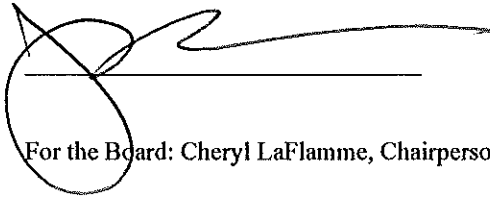
Cheryl LaFlamme
Diane Abate
Charles Foster
John Gannon
Chrystal Holt

OPPOSED:

None

ABSTAINING:

None



For the Board: Cheryl LaFlamme, Chairperson

Date: 8/14/2024

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.
