

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

168/178 SHEPHERD HILL
WURTZEL

Zoning Permit Application Number:

2024-154

Date of First Hearing:

8.5.24

Public Hearing Notice published in the Deerfield Valley News on:

7.18.24

Notice was posted in three public places on:

7.12.24

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

7.12.24

Appeal period for this DRB Decision expires on:

9.15.24

Approved Permit (after two years) expires on:

8.20.26

Act sent
7.15.24

**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: **Matthew & Kathleen Wurtzel**

Owner/Applicant(s) Mailing Address: PO Box 701, Wilmington, VT 05363

Address of the subject property: **168/178 Shearer Hill Road, Wilmington, VT 05363**

Tax Map: parcel # **10-4-44**

A copy of the request is filed in the office of the Board and is referred to as: **Permit #2024-154**

Description of Case per Public Notice

Application # **2024-154**

Applicant proposes change of use adding lodging in the Residential District

Applicable Code Sections:

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

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: **7/18/2024**

Notice was posted in three public places on: **7/12/2024**

A copy of the notice was mailed to the applicant on: **7/12/2024**

A copy of the notice was mailed to the abutters on: **7/12/2024**

Appeal period for this Case expires on: 9/15/2024

Approval expires on: 8/15/2026

Date of Public Hearing: August 5, 2024.

The following presented testimony as the applicant or on behalf of the Applicant:
Matthew & Kathleen Wurtzel

EXHIBITS

The following Exhibits were placed into evidence by the Applicant:

1. DRB Cover Sheet (1 page)
2. Warning of DRB Hearing (1 page)
3. Application for DRB Review (4 pages)
4. Division of Fire Safety Fire Inspection Results (2 pages)
5. Sewer Treatment Plan (4 pages)
6. Floor Plan (4 pages)
7. Short Term Rental Safety, Health and Financial Obligations Checklist (1 page)

8. Division of Fire Safety Fire Inspection Results & Certificate of Occupancy (3 pages)
9. Appointment Confirmation re: Out of State License Transfer (1 page)
10. Wastewater System & Potable Water Supply Permit Application (7 pages)
11. Department of Environmental Conservation Letter, dated 11/22/2006 (1 page)
12. Wastewater & Potable Water Supply Permit (5 pages)
13. Endyne and various other Lab Reports (12 pages)
14. Letter from Merrill Mundell, dated 1/14/2008 with attachments (12 pages)
15. Letter from Wilmington Zoning Administrator, dated 4/26/2024 (1 page)
16. Pictures of 168/178 Shearer Hill (5 pages)
17. List of Abutters (1 page)
18. Interior Pictures of 168/178 Shearer Hill (11 pages)

SYNOPSIS

Applicant proposes a change of use for (1) one-unit as a 3 guest room Short-Term Rental and (2) one-unit as a 4 guest room Short-Term Rental .

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 271 Public Hearings

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: Article II is met.

ARTICLE IV: DISTRICTS & USES

Section 420 Uses

Section 423 Conditional Uses

Section 440 Districts and District Requirements

Section 450 C District Purposes and Descriptions – Residential (R-RES)

Finding of Facts: Subject property is within the Residential District (Section 450 C). The property is identified as Tax Map parcel # 10-4-44. The change of use is for (1) one-unit as a 3 guest-room Short-Term Rental and (2) one-unit as a 4 guest-room Short-Term Rental .

Conclusion of Law: Article IV is met. Short-Term Rentals, four or more guest rooms is a conditional use and is allowed in the Residential District with approval from the DRB.

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 & D

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.

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 not be noise in violation of this section.

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.

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:

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. **Electric Vehicle Charging Stations (EVCS)** are allowed as an Accessory Use in all Districts, in approved off street parking areas.
4. **Minimum Number of Spaces:** The minimum number of required spaces are:
 - i. **Dwelling, Multi-Family:** One (1) parking space for every Dwelling unit
 - ii. **Lodging:** One and one-quarter (1.25) parking space for every guest room.
 - 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.
 - vii. **Short-Term Rentals:** Three-quarters (.75) parking space for every guest room.
 - viii. **Lodging with two (2) guest rooms or less** does not require additional parking.
 - ix. **Spaces with Electric Vehicle Charging Stations (EVCS)** shall be included in the Minimum Number of Spaces designated above.
5. **Drive-Up Windows:** Restaurants, banks, and similar establishments with drive-up windows shall have a stacking lane for each drive-up lane or remote customer access service point long enough to prevent the line of waiting vehicles from extending into the public right-of-way.
6. **Minimize the Visual Impact of Parking and Loading Areas:** Break up parking with buildings and human scaled landscape islands. Utilize the landscape islands for plantings without obscuring traffic. Avoid the visual impact of a "sea of parking". Rear parking and access points including loading areas will minimize the visual impact on the public view of the property. Screen unaesthetic features where possible (see § 730 (E)), sufficient to minimize their physical and aesthetic impact on other land Uses, properties in the area, the Town and public or private roads.
7. **Buffer Area to Parking:** See § 730 E (b) Screening and Buffer Areas for Parking.
8. **Public Road Access:** Traffic circulation shall provide for automotive and pedestrian safety. Access to Public Roads should minimize traffic interruption and avoid undue burden on the main arteries of the Town. Approval for changes to a Town Road requires approval from the Town of Wilmington. Access changes to a state road, including all curb cuts, requires approval from the Vermont Agency of Transportation compliant with 19 VSA § 1111.
9. **Rainwater, Snow, and Ice Removal/Storage:** Plan landscaping for safe snow removal and ice management. Plan for storage of snow at the edge of lots or on parking islands which will not compromise traffic fields of vision or pedestrian walkways (5 foot wide minimum). Plan for rainwater runoff conforming to § 730 (F) through (K) and salt melt in a fashion that will not damage vegetation or water sources.
10. **Safety:** Where a potential safety hazard exists, either from temporary or permanent activities, provisions shall be undertaken to minimize physical hazards. In all cases, consider safe vehicular and pedestrian movement with unobscured view of roadways and pedestrian intersections. Provisions shall be made for maximum traffic and parking safety and pedestrian circulation throughout the Town, including provision for safety during snow and ice removal. Particular consideration shall be given to:

- i. Visibility at intersections
 - ii. Pedestrian safety
 - iii. Convenience
 - iv. Access in case of emergency
11. Neighboring Properties: Provide maximum integration of circulation and parking with neighboring properties. Work collaboratively to maximize flow for efficiency, safety, and attractive solutions.

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 Fact: Applicant provided evidence and testimony that there was parking for a maximum of eight cars. Applicant also provided evidence of a Wasterwater and Potable Water Permit.

Conclusions of Law: Subsections 730 D & H are 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:

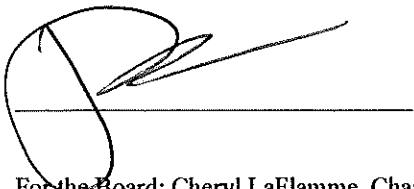
Cheryl LaFlamme
Diane Abate
John Gannon

OPPOSED:

None

ABSTAINING:

None



Date: 8/15/2024

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).

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.
