

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

FLOOD HAZARD ZONE

Hermitage
(Lakehouse)

Zoning Permit Application Number:

2024-170

Date of First Hearing:

9.16.24

Public Hearing Notice published in the Deerfield Valley News on:

8.23.24

Notice was posted in three public places on:

8.22.24

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

8.22.24

Appeal period for this DRB Decision expires on:

10.28.24

Approved Permit (after two years) expires on:

9.27.26

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: **Hermitage Members Club, Inc**

Owner/Applicant(s) Mailing Address: 10 Gatehouse Trail, Wilmington VT 05363

Address of the subject property: **10 Gatehouse Trail, Wilmington VT**

Tax Map: # **HAYSTUTL.000**

A copy of the request is filed in the office of the Board and is referred to as: **#2024-170**

Description of Case per Public Notice:

Application # **2024-170**: Cold Brook Slope Stabilization in the Resort--Commercial/Residential District and Flood Hazard Zone

Applicable Code Sections:

Article II: Sections 221,222, 223, 224, 226, 227, 228, 271, 272

Article IV: Sections 420, 440, 450 F

Article VI: Sections 602, 603, 606, 610K

Article VII: Sections 708, 720, 721, 730 G, I

Notice for a public hearing was published in the Valley News on: **8/23/24**

Notice was posted in three public places on: **8/22/24**

A copy of the notice was mailed to the applicant on: **8/22/24**

A copy of the notice was mailed to the abutters on: **8/22/24**

Appeal period for this Case expires on: 10/27/2024

Approval expires on: 9/27/2026

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

Andrea Ameden

Aaron Sherritt

EXHIBITS

1. Cover Sheet
2. Warning
3. Application (3 pages)
4. Project Summary (3 pages)
5. Location map
6. Layout & construction plan
7. Impact exhibits
8. Details exhibit
9. Email from Ned Swanbery VARN (7 pages)
10. Email from VHB engineering (2 pages)

11. Flood zone map
12. Slope protection & wall detail
13. Abutters list

ARTICLE II: ADMINISTRATIVE PROCEDURES

Section 221: The Role of the Development Review Board

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: Applicants are aware to contact ZA for any plan changes.

Conclusions of Law: Section is met

Section 271: Public Hearings

Public Hearings will be held by the Development Review Board to address zoning applications including Site Plan Review, Appeal of a Zoning administrator decision, or Zoning Administrator Failures to Act.

Appeals of a Development Review Board decision are handled by the Superior Court of Vermont, Environmental Division.

Finding of Facts: Applicant is aware.

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: No interested parties

Conclusions of Law: Section is met.

ARTICLE IV: DISTRICTS & USES

Section 420 Uses
Section 423 Conditional Uses
Section 440 District & District Requirements

Finding of Facts:

Conclusions of Law: Article IV is met

ARTICLE IV (CON'T) –

Section 450: Districts

F) Resort Commercial/Residential

DISTRICT

Finding of Fact: Subject property is in the Resort Commercial/Resident District

Conclusions of Law: Section 450 is met.

USES

Finding of Facts: The Primary Use is resort.

Conclusions of Law: No use changes.

ARTICLE VI: FLOOD HAZARD DISTRICT

Section 602 (A-C): Lands to Which These Regulations Apply

These regulations apply to development in all areas of the town identified as special flood hazard in and on the most current flood insurance studies and maps published by the Dept. of Homeland Security, FEMA, and National Flood Insurance Program (NFIP), as provided by the ANR pursuant to 10 V.S.A. section 753. The base flood elevations and floodway limits (zones A1 – A30, AE and AH) provided by the NFIP shall be used to administer provisions of the regulation. If none is provided by the NFIP then information available from the state or federal agencies or other sources shall be obtained and reasonably utilized.

Finding of Facts: Project is repairing washed out area from previous flood. Culverts will be replaced in the future but does not require DRB permit for replacement.

Conclusion of Law: Section is met.

Section 603 Development Permit Required

A Permit is required, to the extent authorized by State Law, for all proposed construction or other development, including the placement of manufactured homes, in areas of special flood hazard. Conditional Use written decision and approval is required from the Development Review Board for all Uses, except those defined as Permitted Uses in section 610, prior to being Permitted by the Zoning Administrator. Such development and subdivisions shall be reviewed to assure that such proposals minimize potential flood damage, and public facilities and utilities such as sewer, gas, electrical and water systems are constructed so as to minimize flood damage, and adequate drainage is provided to reduce exposure to flood hazards.

Findings of Fact: Applicant is aware

Conclusion of Law: Section 603 has been met.

Section 606: Conditional Uses

Except for the permitted uses as defined in Section 605, all other Uses listed for the zoning district that fall within any designated flood hazard area may be permitted only upon granting a Conditional Use Permit by the Development Review Board.

Findings of Fact: n/a

Conclusion of Law: Section 606 has been met.

Section 610: Development Standards

Before a permit may be granted, the Development Review Board shall require the development to meet the following standards:

K. Watercourse Carrying Capacity: The flood carrying capacity within any altered or relocated portion of a watercourse shall be maintained.

Findings of Fact: No changes to watercourse.

Conclusion of Law: Section 610 has been met.

ARTICLE VII: STANDARDS

Section 708 Nonconforming Uses

- A. A nonconforming Use may be altered or changed for any reason so long as, in the opinion of the Development Review Board, it will not increase the degree of nonconformity.
- B. Any Nonconforming Use which is not actively engaged in for a period of twelve (12) months shall be considered a discontinued Use and the property will become subject to the requirements of this ordinance unless extension is granted by the Development Review Board. In a Development Review Board hearing where there is question as to whether a Use has been actively engaged in for a period of twelve (12) months, the burden of proof is on the applicant to demonstrate active Use in the past twelve (12) months.

Finding of Facts: n/a

Conclusions of Law: Section is met.

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

Findings of Fact: all exhibits in order.

Conclusions of Law: This Use Performance Standard is met

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

E. Air Quality

F. Character of the Area

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 impact on travel on road during construction; replacing existing culverts & surrounding protected areas.

Conclusion of Law: General standard is met.

Findings of Fact: The purpose of the Resort Commercial/Residential District is to: encourage clustered economic development while preserving designated open spaces and historic village settlement patterns thus preventing sprawl and roadside strip development. PUDs are encouraged within the Resort/Commercial District and such types of development must meet the PUD requirements as well as consider physical and environmental limitations, such as flood hazard areas, wildlife habitat, steep slopes and traffic volume and flow.

Conclusions of Law: replacing existing culverts

Conclusion of Law: General standard is met.

SECTION 730: CONDITIONAL USE – SPECIFIC STANDARDS

G. Land and Water Management: Protect properties, transportation systems, and public safety by a. Safe and appropriate water management including water supply/availability, stormwater retention/absorption, and impervious surface/runoff management.

b. prevent and control against water pollution

c. make provision for management of erosion, preservation of rivers & streams, river/stream bank management, wetland protection, waterway and channels management, and agricultural land protection,

Findings of Fact: Applicant is aware, no changes to existing area.

Conclusions of Law: Standard 730 G is conditionally met

I. Natural Resources and Features: Existing vegetation, native species, native trees, scenic views, river access and other natural features shall be preserved to the extent possible and to the extent that they will enhance and promote the natural assets of the town. Clearing of land to create pastureland and scenic spaces/vistas is allowed provided it does not have an unreasonable impact on natural resources.

Development shall blend with the topography, vegetation, and natural land features. It shall not have an undue adverse impact on natural features, natural resources or renewable energy. This includes no adverse impact on forested lands, streams and stream banks, steep slopes, wetlands, watersheds, floodplains, soil unsuitable for development, impervious surfaces essential to stormwater detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural or manmade features, and renewable energy sources.

Findings of Fact: Applicant is aware, no changes to existing area.

Conclusions of Law: Standard 730 I is conditionally met.

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 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. The applicant is responsible for obtaining all state and federal permits.

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:

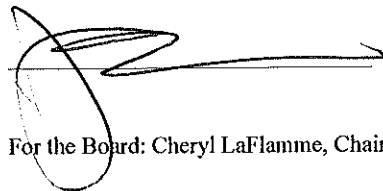
Cheryl LaFlamme
Charles Foster
Diane Abate
John Gannon

OPPOSED:

None

ABSTAINING:

None



For the Board: Cheryl LaFlamme, Chairperson

Date: 9/27/2024

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.
