

Cozy/Brown  
874 vt Rte 100 N

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

Zoning Permit Application Number: 2024-172

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: 12.18.24

Approved Permit (after two years) expires on: 11.18.26

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: **Chris Brown**

Owner/Applicant(s) Mailing Address: PO Box 1261, Wilmington, VT 05363

Address of the subject property: **874 VT Route 100 N, Wilmington, VT 05363**

Tax Map: parcel # **03-1-30**

A copy of the request is filed in the office of the Board and is referred to as: **Permit #2024-072**

**Description of Case per Public Notice**

Application # **2024-072**

**Applicant proposes a variety of changes of use, expansion of an existing building and construction of three structures – a 60'x15' lean-to; a 5'x6' deck, and a 20'x20' pole barn.**

Applicable Code Sections:

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

Article IV – Sections: 420, 440 & 450 E

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

Notice for a public hearing was published in the Valley News on: **8/23/2024**

Notice was posted in three public places on: **8/22/2024**

A copy of the notice was mailed to the applicant on: **8/22/2024**

A copy of the notice was mailed to the abutters on: **8/22/2024**

Appeal period for this Case expires on: 12/12/2024

Approval expires on: 11/12/2026

Dates of Public Hearing: **September 16, 2024 and October 7, 2024.**

The following presented testimony as the applicant:

Chris Brown

The following parties of interest testified:

Janet Boyd  
Robert Stone

11-12

Deb Steele

## **EXHIBITS**

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

- Exhibit 1 – Town of Wilmington Cover Sheet
- Exhibit 2 – Town of Wilmington Warning
- Exhibit 3 – Application (11 pages)
- Exhibit 4 – Service List
- Exhibit 5 – Floor Plan of existing building
- Exhibit 6 – Revised Application, sent by the Wilmington Zoning Administrator to the DRB on 10/4/2024 at 11:23 am (17 pages)
- Exhibit 7 – Revised Application, sent by the Wilmington Zoning Administrator to the DRB on 10/4/2024 at 12:54 pm (20 pages)

## **SYNOPSIS**

Applicant proposes a variety of changes of use, expansion of an existing building and construction of three structures – a 60'x15' lean-to; a 5'x6' deck and a 20'x15' pole barn.

## **ARTICLE II: ADMINISTRATIVE PROCEDURES**

- Section 221 Role of the Development Review Board
- 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 424 Secondary Uses
- Section 440 Districts and District Requirements
- Section 450 E District Purposes and Descriptions – Commercial/Residential District

**Finding of Facts:** Subject property is within the Commercial/Residential District (Section 450 E). The property is identified as Tax Map parcel # 03-1-30. This application seeks to (1) expand the existing building on the property; (2) construct a 60'x15' lean-to for storage; (3) construct a 6'x5' deck; and (4) construct a 20'x15' pole barn for storage. This application also seeks changes of uses to add (1) a manufacturing facility (cabinet maker); (2) three storage garage bays; (3) indoor recreation space for two golf simulators, (4) one additional office space; (5) storage in the new pole barn; and (6) storage in the new lean-to.

**Conclusion of Law:** Article IV is met as follows:

- (1) The 60'x15' lean-to conforms to all site criteria. A Storage Facility is a Conditional Use and is allowed in the Commercial/Residential District with approval from the DRB.
- (2) The 6'x5' deck conforms to all site criteria and is an Allowed Use.
- (3) The 20'x15' pole barn conforms to all site criteria. A Storage Facility is a Conditional Use and is allowed in the Commercial/Residential District with approval from the DRB.

- (4) The existing building will be expanded and contain (1) a manufacturing facility (cabinet maker); (2) storage in three units; (3) indoor recreation (two golf simulators) and (4) one additional office. The Office is a Permitted Use. The other uses are Conditional Uses and are allowed in the Commercial/Residential District with approval from the DRB.

The Commercial/Residential District allows an unlimited number of Commercial Structures and Uses.

## **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 conversation 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 no 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 the cabinet maker will use a dust collection system for sawdust and other cabinet making by-products.

**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 uses 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:**

All exterior lighting in all Districts shall be shielded and downcast. Interior and exterior lighting, glare or reflection are prohibited if they:

1. Constitute an unreasonable nuisance to other property owners or tenants.
2. Are found to not contribute to the aesthetics, scenic value, or character of the area and the community.
3. Could impair the vision of pedestrians or the driver of a motor vehicle or an aircraft.

**Finding of Fact:** Applicant testified that all new exterior lighting will be downfacing and consistent with our Zoning Bylaws.

**Conclusions of Law:** Section 730 A 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.

**Finding of Fact:** Applicant's site plan indicates that there are twelve parking spaces.

**Conclusions of Law:** Section 730 D is met.

**F. Landscaping, Screening and Buffer Areas:** As defined in Section 722 (A) development shall "preserve the rural and agricultural character and ambiance of the community". Natural features characteristic of the town's rural and agricultural character shall be used in Landscaping and Screening to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

**Finding of Facts:** Applicant testified that he has removed a lot of trees and shrubs from the property. The was testimony that the removal of trees and shrubs has adverse impact on abutting residential properties. The Act 250 permit for the property requires the planting of trees and shrubs along Route 100.

**Conclusion of Law:** Section 730 F is met subject to the conditions noted below.

**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 Facts:** According to Jeff Svec, Regional Engineer, Agency of Natural Resources:

*[T]here is a permit for the property that includes water and wastewater systems to serve a building with up to 4 employees. At 15 gpd/employee, that would mean the water/wastewater systems have an approved design flow of 60 gallons per day. Additional uses or a change in use from the 4-employee building may trigger an increase in design flow and require a permit amendment.*

**Conclusion of Law:** Section 730 H is met subject to the conditions below.

**Section 732: Other Specific Standards**

**J. Temporary Outdoor Retail:**

Temporary Outdoor Retail operating less than or equal to four days per calendar year is Allowed without a zoning Permit.

Temporary Outdoor Retail of five (5) days or up to two (2) months per calendar year requires a zoning Permit from the Zoning Administrator.

Retail of greater than two (2) months is not considered temporary and requires the written decision and approval of the Development Review Board.

**Finding of Facts:** Applicant originally planned an outdoor retail space. However, the proposed outdoor retail space was removed from the revised Applications.

**Conclusion of Law:** Section 730 J is not applicable.

**CONDITIONS:**

This application for development is **APPROVED**, as follows:

1. The following new structures are approved:
  - a. A 60'x15' lean-to as set forth in the application received on October 4, 2024, at 12:54 pm
  - b. A 6'x5' deck as set forth in the application received on October 4, 2024, at 12:54 pm.

- c. A 20'x15' pole barn as set forth in the application received on October 4, 2024, at 12:54 pm.
2. Expansion of the existing structure to allow the following uses: (a) a manufacturing facility (cabinet maker) and three units of storage on the first floor; (b) indoor recreation (two golf simulators) and one additional office on the second floor as set forth in the floor plans that are part of the application received on October 4, 2024, at 12:54 pm.

This **APPROVAL** is subject to 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.
2. While there is a State wastewater and potable permit in place, it is unclear from Applicant's testimony if this project is consistent with the conditions of that permit. The Applicant shall apply for any required State wastewater and potable water supply permit for the structures located at 874 VT Route 100 N, Wilmington, VT 05363 that is required. A copy of the approved Permit must be provided to the Zoning Administrator as a condition of this DRB decision.
3. Applicant shall provide buffer areas to screen the buildings and parking lot from abutting residential properties and Route 100 consistent with Article VII, Section 730.F.

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 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:

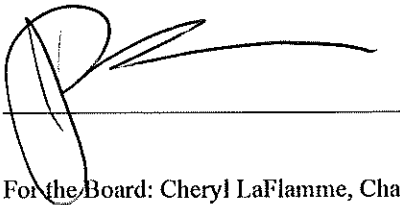
Cheryl LaFlamme  
Diane Abate  
John Gannon

**OPPOSED:**

None

**ABSTAINING:**

None



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Date: 11/12/2024

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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