

**Town of Wallingford, VT Development Review Board (DRB)
Findings of Fact, Conclusions of Law, Decision & Order(s)**

Application #: 20-01: Request for permit to operate Airbnb (short-term) hospitality less than 30 days for accessory dwelling unit, guest rental.

Applicant: Susan Dresner **Mailing address:** 394 Hounds Hill Lane, Wallingford, VT 05773

Subject Property Location: 394 Hounds Hill Lane, Wallingford, VT **Town Parcel:**
4260394

INTRODUCTION

The Zoning Administrator (ZA) received application Home Occupation Permit 20-01 to Susan Dresner for an Airbnb (short term hospitality) use of their Hounds Hill Lane residence on 01/17/2020. Per Article IV of Wallingford Zoning Regulations (effective Sept. 2015), the ZA determined that the application satisfied definition and approved Dresner's application on 01/17/2020, effective as of 2/2/2020.

On 1/31/2020, the ZA received an Appeal of Zoning Administrator's Decision by Wayne and Debra Kelly and J. Patrick Frei requesting the permit be denied "relief is proper because Zoning is residential and proposed use is commercial in nature" (VSA 225, 233 T.32). A Public Hearing was scheduled for 7:00 PM on February 26, 2020 at Town Office. Public Notices were mailed to abutters (USPS Certificate of Mailing) on 2/7 (and corrected Notice on 2/21); as were The Rutland Herald Notice was published 2/8/20. Notice was also posted in three public locations, including roadside Poster.

Accordingly, a Public Hearing was convened by the DRB at 7:20 on 2/26/2020, with a quorum of Members in attendance. Susan Dresner, Wayne and Debra Kelly and a number of Interested Parties (identified by Meeting Minutes & attendance roster) were present.

After hearing testimony from Applicant (Susan Dresner) and Antonietta A. Girardi, Esq., representing the Kellys and M. Frei. The DRB voted to close the Hearing to Testimony but Continue deliberations at 8:30 pm to discuss a previous application (Permit 20-04) and the Dresner application/appeal. After voting on permit 20-04, DRB member Jill Burkett recused herself from further deliberations due to conflict of interest. The DRB discussed the Dresner/Kelly/Frei permit and appeal application and voted to continue Deliberations on March 8, 2020 at 5:30 PM in order to give DRB members times to read the packets of information presented to the Board by both parties. At the March 8, 2020 meeting, the DRB deliberated the application and the appeal, and issued the following decision.

FINDINGS of FACT

1. The Dresner property had an existing apartment over the garage with separate entrance when property was purchased in 2019.
2. The Town Fire Marshal had inspected and approved occupancy.
3. Taxes are filed by Airbnb

4. Rentals are not longer than 30 days
5. MS Dresner signed a Declaration of Covenants when purchasing the property.

CONCLUSIONS of LAW

1. That the Application for permitted Home Occupation is subject to Town Zoning jurisdiction.
2. According to the current Wallingford Zoning Policy (2015), Article IV (General Regulations), the original permit for a Home Occupancy had met the requirements, to wit:

Protection of Home Occupations: None of these Regulations are intended to infringe upon the right of any resident to use a minor portion of a dwelling or appurtenant accessory structure for an occupation which is customary in residential areas and which does not change the character of the neighborhood; a zoning permit is still required.

Residents may use a minor portion of a dwelling or accessory structure for an occupation which is customary in residential areas and which does not change the character of the area as long as:

1. *The dwelling, accessory structures, and the lot maintain a residential appearance at all times.*
2. *The home occupation is clearly secondary to the use of the site for residential purposes.*
3. *The use is conducted within a portion of the dwelling or a building accessory thereto by a resident of the principal dwelling, and having not more than 2 employees.*
4. *The use does not generate unsafe or intrusive traffic, parking, noise, vibration, glare, fumes, odors or electrical interference.*
5. *A permitted home occupation is granted to the applicant for the length of time that the applicant occupies the dwelling. The permit shall expire upon relocation by the applicant and shall neither remain with subsequent occupants of the dwelling nor transfer to a new location with the original applicant. (Zoning Regulations Town of Wallingford adopted 8/17/15, page 9)*

DECISION & ORDER

The Development Review Board finds the Application for a Home Occupation permit is in compliance with Article IV of the current Zoning Regulations.

While a Declaration of Covenants was agreed to by the applicant, the Board concluded that private covenants agreed to by individuals and groups cannot be used for determinations of Zoning and Use in the Town, and therefore are not applicable in the review of the Board's determination.

The DRB also concluded that an Airbnb would not change the character or nature of the residential area.

The majority of the Wallingford Development Review Board authorizes this Decision to RE-AFFIRM the original Permit and DENY the Appeal, which is to be attached to final PERMIT #20-01 with the CONDITIONS to approve, as follows:

1. The Home Occupation permit is non-transferrable and expires when the dwelling is sold.
2. That Airbnb renters be fully made aware of the nature of the private properties surrounding the Dresner residence and will not infringe on those properties e.g., no trespassing, loud noises, disposal of trash.
3. If possible a clearly defined street address sign is recommended to be displayed that clearly identifies the address and location of the Airbnb on Hounds Hill Lane.

William Brooks: Approve
 Erika Berner: Approve
 Jillian Burkett: Recused
 Elizabeth Blaisdell: Approve
 Lucy Thayer: Approve

This Town approval does not release the Applicant from obtaining any other local, state, of federal approval or permit their application may require. Any alteration to the approved application without written prior Town approval, misrepresentation to the facts presented in the application & public testimony, or failure to comply to other VT & federal permits required are grounds to revoke this local permit.

Any Decision by an Appropriate Municipal Panel is subject to appeal by an Interested Party within 30 days of the formal decision, as defined in the Town Regulations, and 24 VSA 4471(a), with a copy submitted to the Town, in accordance with the Act.

William H. Brooks, 4/3/2020, William Brooks, Chairman,
DRB

Received by Zoning Administrator: JM Beasey 4/3/2020