

TOWN OF CHESTER
DEVELOPMENT REVIEW BOARD

APPLICANT: ZAREMBA, GROUP, LLC

LANDOWNER: THEODORE ZACHARY

APPLICATION FOR CONDITIONAL USE PERMIT (No. 430)

**SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
ON REMAND FROM DECISION IN ON THE RECORD APPEAL AND JUDGMENT
ORDER FROM SUPERIOR COURT – ENVIRONMENTAL DIVISION,
DOCKET NO. 66-5-12 VTEC (6/12/13).**

I. BACKGROUND

On April 16, 2012, the Chester Development Review Board (Chester DRB) issued its Findings of Fact, Conclusions of Law and Order, which approved Conditional Use Application #430 allowing “for a retail store to be built and operated at 319 South Main Street in Chester” subject to 35 enumerated conditions (hereinafter “DRB Order of 4/16/12”). By notice dated May 12, 2012, the Interested Persons (see footnote 1) filed an appeal with the Vermont Superior Court – Environmental Division, Judge Walsh presiding. The Interested Persons filed their Statement of Questions For Appeal on June 1, 2012, some of which raised issues as to the adequacy of the DRB Order of 4/16/12 particularly, in light of the “on the record” review afforded zoning appeals from the Town of Chester.

On or about February 8, 2013, the Interested Persons, Applicant Zaremba Group, LLC (hereinafter “Applicant” or “Zaremba”) and the Town of Chester (“Chester”) filed a Stipulated Order Regarding Record on Appeal which stipulated that “for the purposes of this proceeding the ‘record’ will consist of the paper record (already filed), together with the Transcript as supplemented if and where necessary by the Minutes.”

¹ The interested persons are: Shawn Cunningham, Claudio Veliz, Scott Morgan, Georgette Thomas, Brian Morris, Karen Morris, Laura Thomas, Diana Ashworth, Gary Farmer, Michele Bargefrede, Carrie King, Gary King, Jackie Restmeyer, Phillisa Jones Prescott, Matthew A. Prescott, Michael R. Erskine, John Knisley, Hannah Monier, Sarah Yake, Sharon Baker, Jessie Alon, Michael Alon, Wayne LeFevre, Donald Payne, Stephanie Whiting-Payne, Gail s. Gibbons, and Robert D. Gibbons (hereinafter “Interested Persons”).

On June 12, 2013, Judge Thomas G. Walsh issued his Decision in On-the-Record Appeal and Judgment Order (hereinafter “Decision” and “Judgment Order”, respectively). In substance, the Judgment Order stated as follows:

Appellants’ arguments focus on the DRB’s conclusions that the Project does not adversely impact two general conditional use criteria under the Town of Chester Zoning Regulations (Regulations): traffic and the character of the area affected (Regulations §9.4(c)(4)(C) & (B)). Appellants also challenge the DRB’s conclusions under Regulations §9.4(c)(4)(A), which lists a “special” conditional use criterion related to architectural appearance.

For the reasons explained in our decision dated June 12, 2013, we conclude that the DRB’s factual and legal findings on each of these criteria are insufficient for us to conduct the necessary on-the-record analysis. Accordingly, we must **REMAND** the pending matter to the Town of Chester Development Review Board for clarification of its findings of fact and conclusions of law regarding *only* Regulations §9.4(c)(1)(B) & (C) and Regulation §9.4(c)(4)(A).

Judgment Order (emphasis added).

In his subsequent Decision on Motion to Amend or Clarify dated 7/10/13, Judge Walsh further clarified his remand Order by stating as follows:

24 V.S.A. §1208(b) states, “Members [of a local board] who have not attended every session of the board in a contested hearing may participate in the decision if they have listened to the recording of the testimony they have missed (or read transcripts of this testimony) and reviewed all exhibits and other evidence, prior to deliberation” (emphasis added). This Court neither required nor forbade the DRB to convene new hearings or receive new evidence. While the record appears to this Court to be rather robust, whether such steps are necessary is within the discretion of the DRB. Similarly, the use of the word “may” within 24 V.S.A. §1208(b) gives discretion to local boards to determine when it is appropriate for new members to participate by reviewing past testimony. As to the clarity of the record, this is also a determination for the DRB to make rather than this Court. We do note, however, that both parties agreed in a stipulated order dated February 20, 2013 that the record was sufficiently clear for the purposes of this Court’s on-the-record review.

On August 12, 2013, the current duly appointed members of the Chester DRB, they being Carla Westine, Chair, Amy O'Neil, Heidi Ladd, Donald Robinson and Harry Goodell, convened a duly warned public meeting. Each current member of the Chester DRB has now confirmed that they have reviewed the entire record including all exhibits and hearing transcripts, or, alternatively, were present during the original hearings and heard the testimony and reviewed the exhibits. (See footnote 2) Based on this review, the Chester DRB began its deliberations on the issues specifically identified in the Court's Judgment Order. Deliberative sessions were held on August 29, 2013, September 16, 2013, October 8, 2013 and January 13, 2014, January 20, 2014 and January 27, 2014. Based on the existing record, the Chester DRB hereby supplements its Findings of Fact and Conclusions of Law and Order dated April 16, 2012 as follows (See footnote 3):

II. THE RECORD ON REMAND:

The following constitutes the record of documentary exhibits and testimony that was submitted and admitted into evidence during the hearings on this conditional use application:

- Exhibit A. Subdivision plat entitled, "Lands for Theodore Zachary FP1" and Easement Plan entitled, "FP2", both prepared by Speath Engineering, dated 10/3/11. (See footnote 4)
- Exhibit B. Conditional Use Application with attachments as referenced in Table of Contents dated 10/10/11. Entered into evidence and labeled as Exhibit B. Intended to include all revisions presented, the final revision being dated 3/5/12.
- Exhibit C. Chester Town Plan dated 7/21/10.

2 Chester DRB member Henry Goodell was present for and heard the testimony and considered all exhibits during the original hearings on this matter.

3 To the extent that any of these Supplemental Findings or Conclusions conflict with any of those set forth in the Chester DRB Decision of April 16, 2012, the findings and conclusions set forth herein shall control. All other Findings of Fact, Conclusions of Law, Conditions, Orders and Decisions set forth in the DRB Decision of April 16, 2012 shall remain in force and unchanged.

4 It is noted for the record that Exhibit A as submitted duplicates in all material respects the Subdivision Plat (FP-1 and FP-2) dated 10/3/11 as approved on November 14, 2011 by the Chester DRB and as the same appears of record

- Exhibit D. Zoning Regulations for the Town of Chester effective 12/13/07.
- Exhibit E. Future Land Use Plan of the Town of Chester dated 7/21/10.
- Exhibit F. Right Tree Handbook as published by the Vermont Division of Forestry on its Community Forestry Library as of 10/7/11.
- Exhibit G. Ten photographs presented by Applicant of nine business properties located near the proposed project.
- Exhibit H. Preliminary Traffic Assessment Findings prepared by David Saladino of RSG Associates, dated 10/10/11.
- Exhibit I. Report of Jean Vissering, dated 11/11/11 entitled Assessment of Visual Impacts and Compliance with Zoning Regulations with attached Appendix A photos (20), Vissering resume, power point presentation slides (18) and written testimony of Smart Growth Chester.
- Exhibit J. Supplemental written testimony of Ellis Speath of Speath Engineering dated 11/14/11 with attached resume.
- Exhibit K and K.1 Building Elevation (EL-1) prepared by GPD Group dated 10/24/11 (K) and (EL-1.1) 12/16/11 (K.1).
- Exhibit L. and L.1 Three-dimensional drawings of proposed building prepared by Trudell Consulting Engineers (TCE) dated 10/5/11. L-1 includes all revisions presented, the final revision being dated 1/4/12.
- Exhibit M. Depiction of brick façade prepared by Speath Engineering, dated 12/12/11. Exhibit M also includes a sample of clapboard to be used and vinyl corner trim.
- Exhibit N. Interior Floor Plan prepared by The Zaremba Group dated 12/12/11.
- Exhibit O. Letter of Gary Schumacher, Professional Engineer with Chief Building, dated 11/12/11.
- Exhibit P. Supplemental Traffic Assessment Findings prepared by David Saladino of RSG Associates dated 11/14/11.
- Exhibit Q. Written Supplemental Testimony of Chris Ponessi, with Speath

- Engineering submitted by email dated 12/6/11.
- Exhibit R. Resume of Shawn Cunningham, representing Smart Growth Chester entered into evidence on 12/12/11.
- Exhibit S. Photographs presented by Smart Growth Chester of five businesses located near the proposed project, along with respective permits.
- Exhibit T. Fact sheet regarding the S-5 roof guards prepared by Matt Casey with The Zaremba Group, dated 12/12/11.
- Exhibit U. Fact sheet regarding CertainTeed siding, prepared by Matt Casey with The Zaremba group, submitted 1/3/12.
- Exhibit V. Information sheet depicting proposed front yard and building signs, submitted by Matt Casey with The Zaremba Group, dated 1/3/12.
- Exhibit W. Written testimony prepared by Shawn Cunningham representing Smart Growth Chester dated 1/9/12.
- Exhibit X. letter of Michael Rubino of GPD Group regarding sprinkler system dated 3/2/12.
- Exhibit Y. Traffic Study supplement prepared by David Saladino of RSG Associates dated 3/2/12.
- Exhibit Z. Letter of Richard Cloud, Police Chief for the Chester Police Department, dated 8/17/11 and addendum dated 2/21/12.
- Exhibit AA. Letter of Les Lockhart, Senior Manager for Dollar General, regarding their provisions for de-commissioning of building dated 3/5/12.
- Exhibit AB. Spandrel glass faux windows information, submitted by Matt Casey with The Zaremba Group on 3/12/12.
- Exhibit AC. Vermont State Storm Water Permit number 3280-9015 dated 1/26/12.
- Exhibit AD. Letter of David Cooper, attorney for The Zaremba Group, dated 3/6/12 regarding changes in plans responsive to DRB requests.
- Exhibit AE. Letter of Jeffrey Holden, Water & Sewer Superintendent for the Town of Chester, dated 9/26/11 with attached Ponessi correspondence dated 9/23/11.

Exhibit AF. Sample of matte black standing seam roofing, presented by Chris Ponessi, dated 3/5/12, with Speath Engineering.

- Final Site Plan drawing set for the Dollar General Store, VT Route 103, Chester, Vermont prepared by Speath Engineering and submitted by Zaremba Group, LLC, as revised 3/5/12 including the following sheets:

<u>SHEET NO.</u>	<u>REV</u>	<u>DWG NO.</u>	<u>DATE</u>	<u>DESCRIPTION</u>	
1		5	C-1	3/5/12	COVER SHEET
2		5	EC-1	3/5/12	EXISTING CONDITIONS & DEMOLITION PLAN
3		5	SP-1	3/5/12	DOLLAR GENERAL SITE PLAN
4		5	UP-1	3/5/12	UTILITY AND LANDSCAPING PLAN
5		2	GD-1	3/5/12	GRADING AND DRAINAGE PLAN
6		4	DT-1	3/5/12	SITE DETAILS 1
7		5	DT-2	3/5/12	SITE DETAILS 2

- Chester DRB hearing transcripts dated August 8, 2011, October 10, 2011, November 14, 2011, December 12, 2011, January 9, 2012 and March 12, 2012.

III. SUPPLEMENTAL FINDINGS OF FACT RELATIVE TO CSR §9.4(c)(1)(B) – The Character of the Area Affected

The Chester DRB hereby finds the following Supplemental Facts:

91. Findings of Fact numbers 1-90 as stated in the DRB Order of 4/16/12 are hereby incorporated by reference as if fully stated herein.

92. The subject property is identified as Lot 2 on the Subdivision Plat for Lands of Theodore Zachery (Exhibit A) and as referenced in Subdivision Permit 429 approved by the DRB on 11/14/11.

93. The Applicant proposes to construct a commercial retail building on Lot 2 which, as configured on said subdivision plan, contains 1.37 acres (59,487 square feet). Exhibits A and B ("Subject Property").

94. The Subject Property is located entirely within the Residential/Commercial District. Exhibits A and D.

95. A retail store is an allowed conditional use in the Residential/Commercial ("RC") District. Exhibit B and CZR§6.6.1 (Exhibit D).

96. The Applicant proposes to use the Subject Property to operate a retail store which is permitted as a conditional use. The proposed retail store will be owned and operated by Dollar General Corporation, under the tradename Dollar General. Exhibit D.

97. The proposed project includes the construction and operation of a retail store structure and associated parking area at 319 South Main Street. The retail structure will be 9,100 square feet in size. Exhibit B.

98. The proposed project will be located on approximately 1.37 (59,487 square feet) acres of land. The proposed building will be 9,100 square feet in size. This yields a lot coverage of 15.3% which is less than the 35% coverage maximum allowed in the RC District by CZR§6.6.2(5). Exhibits B and D.

99. Immediately adjacent to the Subject Property there is a lot with an existing 3,000 square foot structure which has been used as a restaurant (Zachary's) with a retail addition of about 648 square feet. This lot is identified as Lot 1 on Exhibit A. See Exhibit B and Exhibit I.

100. There is an existing Hardware Store (Chester Hardware) located at 21 Main Street, which occupies a 6000 square foot structure on a .84 acre lot with a lot coverage of 16%. See Exhibit S.

101. There is a retail center (Stone House Antique Center) located at 557 Vt. Rte. 103 South, which occupies a structure of 15,540 square feet. See Exhibit S.

102. There is a convenience store (Jiffy Mart) located at 39 South Main Street which occupies a structure of 1,680 square feet. See Exhibit S.

103. There are multiple existing structures in the area which are 1 story, 1 ½ story and 2 stories, in height. See Exhibit B, Exhibit G and Exhibit I.

104. Buildings in the area are setback from the road at varying distances with some structures being closer to the public highway than others. See Exhibit B and Exhibit I.

105. There is little visible landscaping which exists in the front of nearby commercial buildings as depicted in the evidence presented during the hearings. See Exhibit B.

106. There is no permanent landscaping visible in front of the Country Girl Diner which is located across Route 11 from the subject property. See Exhibit G.

107. The lot adjacent to the subject property has been recently used as a restaurant and is landscaped with deciduous trees planted in islands in the parking lot. See Exhibit G.

108. The landscaping at the Stone House Antique Center has plantings in front of a split rail fence. See Exhibit G.

109. The landscaping in the nearby area consists of a mix of bushes near foundations, buildings and porches. The landscaping also includes deciduous trees, evergreen trees and flower box planters. See Exhibit I.

110. The surrounding properties within the area are comprised of a mixture of commercial and residential uses. See Exhibit B.
111. The office/residence (Whitham residence) is the closest residence at a distance of approximately 150 feet from the proposed project. See Exhibit B.
112. The Windsor Southwest Supervisory Union office building is the next closest at a distance of approximately 300 feet from the proposed project.
113. There are multiple residences on surrounding properties which are 400 feet or more from the subject property. See Exhibit B.
114. Nearby uses include an antique center which is approximately .7 miles from the Subject Property; a Post Office which is approximately .2 miles from the Subject Property; a hardware store which is approximately .4 miles from the Subject Property; a diner across Route 103 from the Subject Property and a restaurant structure located on an adjacent parcel. See Exhibit B, Exhibit G and Exhibit I.
115. Other uses in the area include a convenience store (Jiffy Mart), the Windsor Southwest Supervisory Union office building, the American Legion, an antique center (Stone House Antiques), a craft gallery (Gallery 103), a residential/commercial building (Pizza Stone) and a gas station/convenience store/VT state liquor store (Sunoco Station). See Exhibit B, Exhibit G and Exhibit I.
116. There are no unique topographical features in the area. The land is relatively level. See Exhibit B, Exhibit G and Exhibit I.
117. The parking configurations in the area are varied on the nearby properties. See Exhibit B, Exhibit G, Exhibit I and Appendix A.
118. The parking for the existing Zachary's restaurant is located at the front of the property. The Pizza Stone Restaurant and some area residences also have parking between the structure and the highway. See Exhibit I.
119. The parking for the Sunoco gas station, Chester Hardware, Stone House Antique Center, Country Girl Diner, Jiffy Mart and Jack's Diner is located in the front and on the side of the structures. See Exhibit G and I.
120. The parking for the American Legion is located at the rear of the structure. See Exhibit I.
121. The parking for the Post Office, craft Gallery (Gallery 103), Windsor Southwest Supervisory Union Office/Record structures is located on the side of the structures. See Exhibits I, Appendix A, Figures 4, 8, 10 11, 13 & 14.

122. The parking for the Stone House Antique Center is located between the fence, which runs parallel with Route 103 and the building. See Exhibit G.

123. Existing buildings in the area near the project site vary in architectural features. See Exhibit B.

124. The architectural features of the existing Stone House Antique Center include a one story building with clapboard siding, pitched roof with front facing dormered covered porch. There are columns on the porch, small paned windows, shutters, French style entry doors, shingled roof and cupolas. See Exhibit B.

125. The architectural features of the U.S. Post Office include a one story building, brick and clapboard siding, a pitched shingled roof, covered front entry with columns, small pane windows and a cupola. See Exhibit B.

126. The architectural features of Zachary's Restaurant include a one story brick building with plate glass windows, shingled hip roof and a rounded awning over the front door. See Exhibit B.

127. The architectural features of the Sunoco Station include a one story building with masonry and a smooth surface siding, flat roof, plate glass windows and gas pump islands at the front of the building. See Exhibit B and Exhibit G.

128. The architectural features of the Country Girl Diner include a one story building, metal siding, front entry addition with large picture style window and a rounded edge-flat roof. See Exhibit G.

129. The architectural features of the American Legion include a two story building, clapboard siding, multiple and varied pitch roof lines, varied windows including some divided light, covered portico with columns, cupola and mechanicals on the roof. See Exhibit G.

130. The architectural features of the Pizza Stone Restaurant include pitched roofs, covered front porch, and vertical siding. See Exhibit G.

131. The architectural features of the Chester Hardware include vertical siding, pitched shingled roof, cupola, covered front porch, and bay windows with shutters. See Exhibit B and G.

132. The architectural features of the Jiffy Mart include a one story building, pitched shingled roof with front facing gable entry, cupola, brick and clapboard siding and plate glass windows. There are also canopied gas pump islands in front of the building. See Exhibit G.

133. The architectural features of the office/residential building (Figure 4) include a one and a half story building with shingled pitched roof, covered front entry with columns, two story bay window with a single story addition in the rear, center chimney. See Exhibit I, Appendix A.

134. The architectural features of the Windsor Southwest Supervisory Office building (Figure 5) include a 2 story building with pitched roof, two chimneys along ridgeline of the roof, 2 story bay window with a dormer above them, covered porches with columns and railings. There are Victorian style gingerbread trim details, shutters, clapboards, and a one story addition at the rear. See Exhibit I, Appendix A.

135. The architectural features of the Residence (Figure 7) include clapboard siding, a pitched roof with front facing doghouse dormers and shutters. See Exhibit I, Appendix A.

136. The architectural features of the Residence (Figure 9) include clapboard siding and a pitched standing seam roof. See Exhibit I, Appendix A.

137. The architectural features of the home (Figure 10) include a single story home, clapboard siding, pitched roof, chimney on gable end of house, double hung windows with shutters, front entry with curved roof detail. There is a one story addition on the south side and a two car garage. See Exhibit I, Appendix A.

138. The architectural features of the building (Figure 11) include a one and a half story, clapboard siding, pitched roof and shutters. See Exhibit I, Appendix A.

139. The architectural features of the Post Office (Figure 12) include a single story building with pitched, shingled roof, cupola, covered front porch with columns and divided light windows with shutters. See Exhibit I, Appendix A.

140. The architectural features of Residence (Figure 13) include a one and a half story building with additions, shingled pitched roof, clapboard siding, covered front porch, separate garage type building with balcony and large cupola. See Exhibit I, Appendix A.

141. The architectural features of the building (Figure 14) include clapboard sided home with covered porch, pitched roof with side facing gable, shuttered windows, addition with dog house dormers. See Exhibit I, Appendix A.

142. The architectural features of the Stone House Antiques (Figure 15) include a stone home with pitched roof and side entry covered porch, shuttered windows, and chimneys on both gable ends of the house. There is a separate Antiques building that is a L shaped structure, clapboard siding, pitched shingled roof with cupolas. There is a gabled front entry porch with columns. See Exhibit I, Appendix A, Exhibit G.

143. The architectural features of the American Legion (Figure 16) include various pitched roof lines, main two story building with one story additions, portico, clapboard siding, varied window styles. There are mechanicals visible on the roof. See Exhibit I, Appendix A.

144. The architectural features of the Craft Gallery (Figure 17) include a pitched roof on the main building, clapboard siding, covered front entry with pitched roof, secondary entry with shed roof, diamond shaped window in front gable peak, larger windows flank the front entry way and there is a cupola on the roof. See Exhibit I, Appendix A.

IV. CONCLUSIONS OF LAW RELATIVE TO CHARACTER OF THE AREA:

Based upon the above stated findings of fact, the Chester DRB hereby supplements its conclusions of law with respect to CZR§9.4(c)(1)(B) as follows:

A. The Subject Project is located at 319 South Main St. in the RC (Residential-Commercial) District in the Town of Chester. Pursuant to current Town of Chester Zoning Regulations, a Retail Store is an allowed Conditional Use in this District. CZR§6.6.1(2). A retail store “includes shop and store for the sale of retail goods, and department store. . . .” CZR §11 (Definitions). The project as proposed constitutes a retail store under the CZR.

B. Pursuant to CZR§9.4(c)(1)(B), the use proposed by the Applicant within the RC District “shall not adversely effect . . . the character of the area affected.” ID.

C. The Chester DRB concludes that the CZR itself suggests that a retail store as requested by the Applicant is consistent with the character of the area within the RC District given that it is one of 23 uses which are conditionally permitted. Because, however, conditional use review under CZR §9.4(c)(1)(B) seems to contemplate a review of the actual uses within the affected area in relation to the proposed use, we will review those uses as presented to the DRB to determine if the character of the area as it currently exists will be adversely affected.

D. The Current Uses in the RC District and the nearby area, include a mix of residential and commercial uses including: private residences, business offices, restaurants, service stations (gasoline sales), retail stores, membership club (American Legion) and a U.S. Post Office.

E. The architectural styles of the current structures associated with these uses in this area include: 1 story, 1 ½ story and 2 story buildings constructed with a variety of roof pitches and roofing materials. Some structures in the area are sided with clapboards, others are sided with brick, masonry, vertical wood siding, metal siding or a combination of wood and brick. Structures in the area have been built with varied window styles such as double hung windows with the appearance of small panes, double hung 1 over 1, picture windows and plate glass style windows. Current structures in the area also feature varying architectural elements such as covered porches, chimneys, cupolas and shutters. Setbacks of the existing structures in the area are varied, with some structures closer to the roadway than others.

F. Parking configurations for nearby uses are varied: some provide parking in front of the structure, some on the side, some in the rear and some provide a combination of these parking arrangements.

G. Landscaping on existing properties in the area is also varied. Some properties have mature trees on site, some have grassy lawns, some have various bushes, shrubs and flowers planted or a combination of these landscape elements. Several properties have included split rail fencing in their landscaping.

H. The sizes of nearby structures associated with current uses is varied and includes large buildings such as the American Legion and the Stone House Antiques structures. Other structures in the area are smaller in scale, examples being the private residences and the Jiffy Mart. The topography of the area is fairly flat and level.

I. “[C]haracter of the area affected” is not specifically defined in the CZR. The term is, however, used in the enabling statute found at 24 V.S.A. §4414(3)(A)(ii), which reads, in part, as follows:

These general standards shall require that the proposed conditional use shall not result in an undue adverse effect of any of the following:

...

(ii) The character of the 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 municipal plan. . . .

The DRB concludes that the language of CZR §9.4(c)(1)(B) closely tracks the language from the enabling authority cited above and, given the affirmative requirement that the general conditions specified in section 4414(3)(A)(i)-(iv) are required municipal zoning regulations, it will consider the requirements of Section 9.4(c)(1)(B) to be synonymous with the enabling statute.

J. Although the CZR itself does not provide a specific statement of purpose for the RC District in Section 6.6, the Town Plan does provide as follows:

Mixed Use Village

The village centers, that is, Main Street and the Green, Depot area, and Stone Village, currently have a mixture of high density residential, commercial, industrial, and public uses. These areas should remain as they are in character and settlement pattern.

Commercial development has historically been located in the village centers, and is encouraged to occur in these areas because of the availability of Town water and sewage. Commercial development in mixed use areas should be surrounded and interspersed with high density residential, public and light industrial uses. These areas are intended to continue the long tradition of Vermont’s village centers. Development in these areas should be of the highest density in the Town, and should facilitate development of a circulation system that accommodates pedestrians and other non-motorized travel. New development should not detract from the historic character and aesthetic

qualities of the village centers. Affordable housing, assisted living facilities and multi-family residential are encouraged in these areas, and discouraged in rural areas that are far from services available in the village.

Chester Town Plan (7/21/10), pp. 10-11.

K. The DRB concludes that the proposed use as modified and conditioned, is consistent with keeping commercial development within the mixed use village center where there is easy access to Chester's most densely populated areas and town water and sewer is available. The DRB further concludes that the project will not detract from the historic character and aesthetic qualities of the village centers, particularly given its location outside the Village Historic District.

L. The DRB further concludes that the proposed project is consistent with other uses in the immediate area. The proposed Dollar General Retail Store at 9,100 square feet will be smaller than some structures in the area and larger than others. The proposed Dollar General Store is setback from the roadway 93 to 119 feet, which is further back from the roadway than some, but not as far back as others. Parking proposed by the applicant includes spaces in the front and side, a parking configuration which is not dissimilar from other nearby properties with commercial uses. The architectural style of the building with its pitched roof, cupola, horizontal clapboard siding, trim work and brick facing is similar to other nearby structures. Landscaping proposed by the Applicant including the planting of deciduous trees, shrubs and grassy lawn areas which are in keeping with the landscape styles in the area and have been modified by the Applicant to maintain the character of the area. See Revised Plans at UP-1 (revised 3/5/12).

M. Based on the testimony and evidence in the Record, the Chester DRB concludes that the proposed project falls within the existing range of compatible uses and the architectural appearance, structure size, parking configuration, setbacks, lot coverages, and landscaping styles associated with those uses currently found in the area and therefore the project, as proposed and modified, and with the conditions as stated in the DRB Order of 4/16/12, will not adversely affect the character of the area.

N. The Chester DRB acknowledges the expert testimony of Jean Vissering, a Vermont licensed landscape architect, and her opinions concerning the aesthetic impact of the project as proposed and modified by the approved plans revised on March 5, 2012. The DRB, however, respectfully disagrees with her opinion that the project as proposed will be an "eyesore" or that it will present a subpar style and appearance at the gateway to the historic village center. (See Exhibit I.) To the contrary, the DRB concludes, as stated above and hereafter, that the project as modified will be consistent with the character of the area as it currently exists and as contemplated in the RC District. Further, and while acknowledging the licensing requirements for landscape architects, see 26 V.S.A. §2611 *et. seq.*, and Ms. Vissering's qualifications, we do not believe expert testimony is a necessary component of proof in the area of use compatibility or architectural appearance given the substantial record of other uses and structural appearances on the record in the area from which we can make our own determination. We therefore respectfully decline to accept Ms. Vissering's opinions as our own on the issues of compatibility with the character of the area or whether the project adheres harmoniously to the overall New England

architectural appearance of Chester.

IV. FINDINGS OF FACT RELATIVE TO CZR § 9.4(c)(1)(C) RELATING TO TRAFFIC:

The Chester DRB hereby Finds the following supplemental Facts in connection with the criteria found in CZR § 9.4(c)(1)(C):

145. The Findings of Fact as stated in the DRB Order of 4/16/12 are incorporated herein by reference.

146. The subject property is located on South Main Street, also known as Vermont Route 103 South, a heavily traveled Class I town highway bearing local, seasonal tourist, recreation bound commuters and truck traffic. See Exhibit C.

147. The Proposed Dollar General Retail Store will share a driveway access off of South Main Street/Vermont Route 103, with the existing Zachary's Pizza Restaurant. See Exhibit B.

148. The driveway access is being relocated approximately 90 feet south from the present location of the current entrance to Zachary's Pizza Restaurant which will improve site distances. See Exhibit B.

149. The proposed project's entry, parking, loading and service areas allow for traffic circulation on site with all vehicles exiting the site in a forward motion. See Exhibit B.

150. To the north of the project site is the intersection of Vermont Route 103/Maple Street and Vermont Route 11 West/Main Street. To the south of the project site is the intersection of Vermont Route 103/South Main and Vermont Route 11 East/Pleasant Street. See Exhibit B.

151. Vermont Route 103 is part of the National Highway System and the national truck network. See Exhibit C.

152. The town highway ends and the state thruway begins near or at the project location. See Exhibit I.

153. The peak business hours are 8:00 – 10:00 a.m. and 4:00 – 6:00 p.m. See Transcript dated August 8, 2011, Page 12.

154. The Average Annual Daily Traffic counts in 2006/2007 along the stretch of Route 103 where the proposed project is located shows approximately 8,500 vehicles passing by this location on a daily basis. See Exhibit C.

155. The proposed project is located in the highest average daily traffic trips location in all of Chester. See Exhibit C.

156. The projected peak hour vehicle trip generation will vary from a low of 89 during weekday evenings to a high of 110 on Saturday mid-day. These estimates account for anticipated trip generation during peak ski season. See Exhibit Y.

157. A "Pass by trip" is defined as vehicles driving by the site on their way through the area of town and turning in to visit the site. A "Primary trip" is defined as travel to and from the Dollar General store from a single location. See Transcript dated March 12, 2012, pages 40 and 41.

158. Estimated weekday evening ski season traffic consists of 42 pass by trips and 47 primary trips. See Exhibits H and Y.

159. Estimated saturday mid-day ski season traffic consists of 42 pass by trips and 68 primary trips. See Exhibits H and Y.

160. With regard to Congestion Assessment; RSG Inc., Transportation stated that intersection delays will be increased by no more than 3 seconds under any scenario due to the project. See Exhibits H and Y.

161. There is no change in level of service grade at any intersection, with no approaches operating below LOS D conditions, which is an acceptable level of delay by VTrans. See Exhibits H and Exhibit Y.

162. The level of service will not drop below a grade D during peak ski season traffic. See Exhibit Y.

163. With regard to safety assessment, the undisputed testimony is that in 2006-2010, there are no reported crashes within stopping site distance (200 ft) of the site driveway. See Exhibit H.

164. That the traffic assessments prepared by RSG, Inc., Transportation were based on conditions on weekday evening and Saturday mid-day traffic numbers, as well as peak ski season. See Exhibits H and Exhibit Y.

165. That the Chester Police Chief Cloud stated that he had reviewed the proposed location and that, in his opinion, traffic safety and parking would not be an issue. See Exhibit Z. The DRB finds this opinion to be credible given the other factual findings stated above.

VI. CONCLUSIONS OF LAW RELATIVE TO TRAFFIC:

Based upon the above findings of fact, the Chester Development Review Board hereby concludes with respect to CZR §9.4(c)(1)(C) as follows:

O. The Proposed project is located at 319 South Main St., Chester, Vermont. South Main St. is also Vermont Route 103, and is part of the NHS (National Highway System) and the

Vermont Truck Network. Vermont Route 103/South Main St is a heavily traveled Class 1 Town Highway, bearing local, seasonal tourist, recreation bound commuters and truck traffic. Average Annual Daily Traffic counts in 2006/2007 along the stretch of Route 103 where the proposed project is located, shows approximately 8,500 vehicles passing by this location. The Town Plan references that this location yields the highest average daily traffic trips location in all of Chester.

P. The Proposed Dollar General Retail Store will share a driveway access off of South Main Street/Vermont Route 103, with the existing Zachary's Pizza Restaurant located on the adjoining plot. The driveway access is being relocated approximately 90 feet south from its present location to improve site distances.

Q. This section of South Main Street/Vermont Route 103 is located between 2 busy intersections. To the north of the project site is the intersection of Vermont Route 103/Maple Street and Vermont Route 11 West/Main Street. To the south of the project site is the intersection of Vermont Route 103/South Main and Vermont Route 11 East/Pleasant St.

R. The DRB concludes that the traffic assessment for the proposed Dollar General Retail Store prepared by RSG, Inc., is credible. The DRB concludes that the average Projected Peak Hour Vehicle Trip Generation during ski season will vary from a low of 89 during weekday evenings to a high of 110 trips on Saturday mid-day. Weekday evening ski season traffic consists of 42 pass by trips and 47 primary trips. Saturday mid-day ski season traffic consists of 42 pass by trips and 68 primary trips. We also conclude that intersection delays will increase by no more than 3 seconds on all intersection movements, with no change in level of service grade at any intersection, and with no approaches operating below LOS D conditions, which is an acceptable level of delay. There have been no reported crashes within stopping site distance (200 ft) of the site driveway (2006-2010). The traffic assessment prepared by RSG Inc., as stated above, was based on conditions on weekday evening and Saturday mid-day traffic numbers during ski season peak hours.

S. Chester Police Chief Cloud stated in a letter that he had reviewed the proposed location and that in his opinion, traffic safety and parking would not be an issue. He further stated that if in the future, traffic should become problematic, that the rate for an officer to direct traffic would be \$65.00 per hour and would be the responsibility of the establishment. This has been included as a condition of permit approval.

T. Based on the testimony and evidence in the record, the DRB concludes that this project will add "primary trip" traffic to this section of South Main St./Vermont Route 103 and the project will also draw some "pass by trip" traffic into the site. South Main St/Vermont Route 103 is a heavily traveled Class 1 highway that runs through the Town of Chester and the added traffic trips will not substantially increase traffic in this area or add to undue traffic delays or congestion in the area. The proposed project's entry, parking, loading and service areas allow for traffic circulation on site with all vehicles exiting the site in a forward motion. The Chester Police Chief stated he had no concerns for traffic safety. The DRB concludes that the project will not adversely affect traffic on the roads and highways in the area.

VII. FINDINGS OF FACT RELATIVE TO SPECIAL CRITERIA CZR §9.4(c)(4)(A):

The Chester DRB hereby Finds the following supplemental Facts as to criteria set forth in CZR §9.4(c)(4)(A):

166. The Findings of Fact as stated in the DRB Order of 4/16/12 are incorporated by reference as if fully stated herein.

167. The Findings of Fact as stated in Supplemental Findings Nos. 91 – 147 are incorporated by reference as if fully stated herein.

168. The term “center of Chester” as used in CZR §9.4(c)(4)(A) is not defined in CZR Section 11 or elsewhere in the regulations. There is not a “definitions” section in the Chester Town Plan. See Exhibit D.

169. The Chester Town Plan makes three references to a town center. See Exhibit C.

170. Reference 1: The Chester Town Plan states in relevant part that “Land use in the Town of Chester follows patterns of traditional Vermont villages. The traditional village area includes Main Street, the Depot and Stone Village that feature a mix of commercial, industrial and residential uses, with services such as a post office, health care, the elementary school, bus stops and municipal offices. The village center is served by municipal water and sewer service, while outlying areas are served by private wells and onsite septic systems. Residential areas outside the village centers are primarily rural in nature, and of low or moderate density.” See Exhibit C, Page 8.

171. Reference 2: The Chester Town Plan states in relevant part that “The village centers, that is, Main Street and the Green, Depot area, and Stone Village, currently have a mixture of high density residential, commercial, industrial and public uses. These areas should remain as they are in character and settlement pattern. Commercial development has historically been located in the village centers, and is encouraged to occur in these areas because of the availability of town water and sewer. Commercial development in mixed use areas should be surrounded and interspersed with high density residential, public and light industrial uses. . . .” See Exhibit C, Page 10.

172. Reference 3: The Chester Town Plan states in relevant part that “The Chester Village Historic District (entered in the National Register on August 8, 1985) corresponds to the village center, focused on the Green together with related historic development along Main Street between Maple Street and Lovers Lane, including seven side streets.” *Exhibit C, Page 45.*

173. That the Chester Town Plan further states that, “There are 156 principal buildings in the district (Chester Village Historic District), among which only 17 buildings do not contribute to the district’s historic character. The architectural styles represented include the Federal, Greek Revival, Italianate Revival, Gothic Revival, Queen Anne/Eastlake, Colonial Revival, and Georgian Revival. Most are wood frame construction and the buildings generally share the temple form and domestic scale with gable facades oriented toward the street. There

are three examples of the “snecked ashlar” construction (which is prevalent in the buildings of the Stone Village Historic District). Although a few intrusions have appeared in the recent decades, Chester Village Historic District retains to an extraordinary extent the integrity of its nineteenth and early twentieth century architectural environment. The description of the district and of the various individual buildings can be found in the National Register under the Chester Village Historic District.” See Exhibit C, Page 45.

174. The proposed project and use are not located within the Chester Village Historic District. The Chester Village Historic District is located primarily in the Aquifer Protection District 1 (APD1) for zoning purposes. See CZR §6.9 APD1.

175. The aerial view of Chester Village on Main Street shows the Town Library which is a brick building with architectural elements including a slate roof, Queen Anne style roof lines and turrets. This view also shows the Chester Andover Elementary School, TD Bank, the Jiffy Mart and Chester Hardware. See Exhibit G and Exhibit I.

176. All buildings identified in the accepted exhibits are within the area served by municipal water and sewer.

177. All buildings identified in the accepted Exhibits demonstrate a very wide range of architectural styles and features.

178. There is currently a mix of buildings particularly within that portion of the Chester center which is outside the Chester Village Historic District and closer to the Subject Property.

179. The existing buildings near the Subject Property vary in architectural features. See Exhibit B and Supplemental Findings Nos. 123-147.

180. The Dollar General Retail Store is oriented with the gable façade facing the street. It is to be sided with horizontal clapboards, the roof will be peaked, there will be a brick knee wall on the front entry side of the building. The architectural elements of the proposed building include cornice boards, rake boards, window casings and door casings. Faux windows will be used on the front gable end of the building to give the appearance of functional windows. The proposed height of the building will not exceed 35 feet which includes the proposed cupola on the roof. A hayloft style door is proposed for the upper front gable end of the building.

VIII. CONCLUSIONS OF LAW RELATIVE TO SPECIAL CRITERIA 9.4(c)(4)(A):

Based upon the above findings of fact, the Chester DRB hereby concludes as follows:

U. The Town of Chester Zoning Regulations state in 9.4(c)(4)(A) that the DRB should consider the following: “That all construction of new buildings, as well as any exterior alteration, fencing, lighting, reconstruction or renovation of existing buildings adhere harmoniously to the over-all New England architectural appearance which gives the center of Chester its distinct regional character and appeal.”

V. The Chester Zoning Regulations - Section 5 - Classes of Districts - do not specify a "center of Chester" Zoning District. The Chester Zoning Regulations - Section 5 - Classes of Districts - do not create a Chester Village Historic District; a District designated pursuant to the National Historic Register and is located primarily within the APD1 District. The Chester Zoning Regulations - Section 11- Definitions- does not define "center of Chester", nor does it define "over-all New England architectural appearance".

W. The Chester Town Plan- Chapter 1- Land Use- Current Land Use, refers to the "village center" in several paragraphs titled Current Land Use and Mixed Use Village and in Chapter 4 – Natural and Cultural Resources, paragraph titled Cultural Resources. The DRB concludes from these references that the "overall New England architectural appearance" referred to in CZR §9.4(c)(4)(A) encompasses a broader variety of architectural appearance than the historic buildings located on the Village Green. In fact, the special criteria referenced in Section 9.4(c)(4) do not specifically apply to proposed conditional uses within the APD1 District.

X. Photographs of buildings entered as Exhibits include buildings along Main St. and buildings where municipal water and sewer is available in the town of Chester. The DRB concludes that these photographs show a variety of architectural appearances that, despite those differences, adhere harmoniously to the overall New England architectural appearance which gives Chester its character.

Y. The Dollar General Retail Store is oriented with the gable façade facing the street. It is to be sided with horizontal clapboards, the roof will be peaked, there will be a brick knee wall on the front entry side of the building. Architectural elements including cornice boards, rake boards, window and door casings are included in the architectural design. Faux windows will be used on the front gable end of the building to give the appearance of functional windows. The proposed height of the building will not exceed 35 feet which includes the proposed cupola on the roof. A hayloft style door is proposed for the upper front gable end of the building. The DRB concludes that these features adhere harmoniously to the overall New England architectural appearance of Chester and that it will not detract from Chester's distinct regional character or appeal.

Z. The DRB concludes that the Dollar General Store, while not designed to be a replica of a 19th century building, is, as presented and modified by the Applicant, designed to blend harmoniously with the style of buildings currently on Main Street, South Main Street, the Depot area, Stone Village and with other buildings constructed where Town water and Sewer is available.

AA. The Chester DRB concludes that as designed and modified, the proposed structure and landscaping will be harmonious with the overall New England architectural appearance and will not detrimentally affect the distinct regional character and appeal as it currently exists in the center of Chester.

IX. ORDER AND DECISION

Based on the above stated Findings and Conclusions, as well as those stated in the DRB Order (4/16/12), the Chester DRB hereby decides that the Project as proposed and modified on the March 5, 2012 Plan revisions, satisfies the conditional use criteria found in CZR §§9.4(c)(1)(B) and (C) and (4)(A). The DRB further adopts, in all respects, the Order with conditions as set forth in the DRB Order (4/16/12) at pp. 14-17.

DRB MEMBERS:

Carla M. Westine

Carla Westine, Chair

Amy O'Neil

Amy O'Neil

Heidi Ladd

Heidi Ladd

Donald Robinson

Donald Robinson

Harry Goodell

Harry Goodell

Dated at Chester, Vermont this 4th day of ~~January~~ ^{February}, 2014.