

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: **John & Patricia Reagan of Dot's Restaurant**

Agent(s) Mailing Address: **Cory Frehsee, Stevens & Associates, PO Box 1586, Brattleboro VT, 05301**

Owner/Applicant(s) Mailing Address: **PO Box 1415, Wilmington VT, 05363**

Address of the subject property: **5 West Main Street, Wilmington, VT 05363**

Tax Map #**021-20-032.000**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2012-050

Description of Case per Public Notice:

Application # 2012-050; owner: John & Patricia Reagan; Agent: T. Cory Frehsee. Application being made for Historic Review District, Flood Hazard, Variance and Conditional Use review to allow re-construction of a Restaurant in a Non-conforming structure; Flood Hazard Area Regulation Sections 804, 811 & 820.B.1 & 3, Historic Review District Section 610 & 620 and the Zoning Ordinance Section 3(e), 7.C & 10.E; location: 5 West Main Street.

Notice for a public hearing was published in the Valley News on: **5/18/2012**

Notice was posted in three public places on: **5/18/2012**

A copy of the notice was mailed to the applicant on: **5/18/2012**

A copy of the notice was mailed to the abutters on: **5/18/2012**

The public hearing was held on: **6/4/2012 and continued to 6/18/2012**

Action taken on this application may be appealed by anyone identified as an interested party, pursuant to Vermont Statutes Annotated. Said appeal shall be made to the Vermont Environment Court.

Appeal period for this Case expires on: August 2, 2012

In *addition* to the Applicant / Agent the following persons were heard by the Board in connection with this request: (Copies were mailed to those persons listed below as having been heard.)

Alice Herrick, Zoning Administrator
Robert Stevens, Stevens & Associates

I. The Board FINDS:

The following are the circumstances which give rise to the request, and the following are facts and opinions presented to the Board at the hearing and developed by the Board in independent evaluation.

EXHIBITS:

- Application (10 pages)
- A Flood-Proofing Certificate (6 pages)
- B Proposed Reconstruction, Building Section for Flood Proofing, by Stevens & Associates, Section B-B
- C Letter from Robert Stevens, May 13, 2012, describing the proposed flood-proofing measures
- D Abutters List
- E Plan set titled Reconstruction & Flood Proofing Project by Stevens & Associates (Title page and 12 additional pages)
- F Site Plans by Stevens & Associates
 1. Existing Conditions Plan, C-1, May 11, 2012
 2. Layout Plan, C-2, May 11, 2012
 3. Grading Drainage & Utilities Plan, C-3, May 11, 2012.
- G "Fee Schedule" with revised floor area calculator
- H Historic photos - three pages
- I Letter from Cory Frehsee, June 4, 2012, three pages with two map pages containing a revised Layout Plan, C-2, dated June 1, 2012, replacing Exhibit F 2.
- J Letter from Cory Frehsee, June 15, 2012, three pages and also containing:
 1. Layout plan C-2, May 11, 2012, revised June 14, 2012
 2. Grading Drainage & Utilities Plan C-3, May 11, 2012, revised June 14, 2012
 3. Turning Analysis, westbound WB-50 truck
 4. Turning Analysis, eastbound WB-50 truck
 5. Turning Analysis, westbound WB-40 truck
 6. Turning Analysis, single unit 30 foot truck
 7. E-mails between Cory Frehsee, Ben Joyce, Surveyor, and Alice Herrick
 8. Warranty deed (three pages)
- K Letter from Scott Murphy, Town Manager, 6/18/2012
- L ADA Guidelines, ADAAG 4.1.3(8) (two pages)

M Americans with Disabilities Act, Section 206.4

N E-mail from Theresa Gilman, VTrans, June 18, 2012 regarding the handicap ramp

O E-mail from Theresa Gilman, VTrans, June 18, 2012 regarding the sidewalk modifications

1. The subject property is in the Commercial and Historic Review Districts of the Town of Wilmington. The property is identified as Tax Map 021-20-032.000.
2. The subject property is also in the Special Flood Hazard Area (AE Zone). On June 4, 2012 the Board voted to separate the flood hazard portion of the application from the rest of the application and has separately issued its findings on this portion, identified as findings for Case No. 2012-050 FHR. Testimony concerning the balance of the application was recessed until June 18, 2012. Board member Paul Tonon was absent from the June 4th meeting, but has listened to the entire tape recording of the testimony given on June 4th and was present at the June 18th meeting.
3. On August 28, 2011, Applicant's restaurant, with an unused second story apartment, was almost completely destroyed by the flood waters of Tropical Storm Irene. The building had been erected in the early 1800's and pre-dates Wilmington's zoning ordinance. Applicant has applied to continue the first floor as a restaurant and the second floor will be used for an apartment and restaurant storage. Section 3.A(1)(e) allows for substantial restoration within one year and continued use of a Non-conforming building damaged by fire or other casualty. The handicap ramp, front porch and rear addition are proposed additions to the Non-conforming structure and require approval under the current zoning bylaw standards.
4. In addition to Flood Hazard Review, Applicant's reconstruction of a non-conforming structure must meet the standards of Wilmington's Historic Review District. Some of the proposals may also need to meet Variance and Waiver requirements for additions in the front, side and rear setback areas. Although Conditional Use review was also warned, the Board has determined that it is not required in the instant matter as the number of seats in the restaurant remains the same.
5. The ¼ acre property is irregular in shape, with south and west frontages on two public roads, Vermont Route 9 and Ray Hill Road. Its eastern property line is the center of the North Branch of the Deerfield River making almost half of the property in the river. From the bridge abutment on the southeast corner to the southwest corner of the property measures about 18 feet. The setback requirement is 20 feet from a public way such as Route 9 and Ray Hill Road and 10 feet other property lines for a pre-existing Non-conforming building [see Section 3.A(1)(a)].
6. Much of the subject building is in a floodplain (its balcony and present supporting

structure extend over the floodway) and Applicant intends to forego future use of the building's basement due to the floodplain location. To compensate for much of the lost basement square footage, Applicant intends to add an addition to the northern end of the building which would result in a reduction in usable square footage from 3,922 square feet to 3,857 square feet. Setback requirements necessitate Applicant applying for a Waiver and a Variance. The entire building will be raised approximately 18 inches so that the first floor will be above Base Flood Elevation (BFE). This will make the building three feet, three inches above street level and two feet, nine inches above grade along the western side.

7. Since the building needs substantial rebuilding, the Applicant must now comply with the Americans with Disabilities Act (ADA) regulations with regard to handicap access. Applicant proposes to construct a 24-foot long concrete ramp along the western side of the building in order to meet the requirements of the Americans with Disabilities Act (ADA). (See Exhibits L and M). The ramp would be five feet wide with railings on each side making 4 feet, 9 inches of useable ramp width. There would be a 5 foot square landing at the top corner, and then the access would continue along a covered front porch to the main entrance. The ramp, landing, porch and railings have all been designed to ADA standards. As it would be attached to the building, it would be considered a structure and would have to comply with setback requirements. Much, if not all, of the ramp would be on Town land and both a Variance and Town permission are needed. See Exhibit K wherein the Town of Wilmington consents to the proposed ramp.
8. A porch is to be constructed on the front of the building, with steps leading down to street level. It will be 5 feet, 6 inches wide, but due to wooden posts it will have an effective width of 4 feet, 9 inches. It will have a roof overhanging the porch by 9 inches, resulting in a setback from the eave line of approximately 7 inches from the front property line. (Exhibit I). The photos in Exhibit H show the building in 1910 with a front porch.
9. The building's front door will be three feet, three inches above street level and Applicant intends to construct 5 steps up to the porch and front door. However, the stairs will encroach on the right-of-way of the State Highway. As they will be attached to the porch and building, both a Variance and State of Vermont permission are required. See Exhibits N and O wherein the State allows the construction of the stairs.

II. The Board CONCLUDES:

The subject property is in the Historic Review District and requires a permit for Historic Design Review. The Board concludes that the ramp and front porch do not qualify for Waivers as they come within two feet of the property line. Therefore, Variance criteria will be applied. Some of the rear addition can be covered by a Waiver but since the square footage requested is greater than 200 square feet both a Variance and a Waiver

need to be granted. The approval of a Waiver or a Variance requires positive findings on all the criteria.

III. Regarding the Historic Review District criteria, the Board CONCLUDES:

With regards to the criteria for Historic Review District, the Board concludes that this proposal *will* conform to the requirements of the Wilmington Zoning Ordinance.

1. The Board has reviewed Sections 610, Site Review Criteria and 620, Building Review Criteria, of Wilmington's Historic Review District Ordinance. The importance of Applicant's restaurant, located in the center of Wilmington's historic district, necessitates the Board's careful scrutiny as to its reconstruction. Originally built in a Greek Revival style, Applicant is seeking to reconstruct it in the same style (see Exhibit H – historic photos of the building) and has hired a historic preservation consultant for the project. Testimony was offered that the private consultant, Liz Prichett, "directed that the porch should be reconstructed in accordance with the historic photographs and the concrete landing be simplified in order to minimize its visual impact. This scope is part of a part 2 historic preservation certificate application ...and is necessary for the building to maintain its historic integrity and remain qualified for historic tax credits. This tax credit application has been approved by the state and is currently under federal review." (Exhibit J).
2. Applicant's challenge is in rebuilding the structure as close to its nineteenth century roots as possible, while also incorporating twenty-first century requirements such as handicapped accessibility and modern building codes, all within an extremely small plot of land bounded by two roads and a river. The structure will be rebuilt on essentially the same footprint, with the rear of the building extended by 24 feet to compensate for the closing-off of the basement. Applicant has provided for vehicular and pedestrian circulation as well as for stormwater runoff. Due to its riverside location, the building will be clad in fibre-cement siding, such as "Hardi-Plank", with wooden trim, and much of the roof will continue to be slate. Windows may be vinyl but all trim board will be wood. A window on the second floor facing Route 9 will be added. The placement of the window is similar to a window in the 1910 photographs. While the balcony will continue to be over the river, it will now be cantilevered. Viewed from the street, the building will appear to be quite similar to its appearance before the flood, with the addition of a front porch and architectural details, which appears in the historic photos (Exhibit H). In conclusion, the Board finds that the Applicant has adhered to, as much as possible, all of the criteria as contained in the Historic Review District Ordinance.

IV. **CONDITIONS for Historic Review District:**

This is granted subject to the following restrictions, requirements, limitations or specifications.

1. The Applicant shall comply, as closely as possible, with the site maps and drawings, as submitted in evidence.
2. As certain aspects of its site plans are still evolving, the Applicant shall comply with all of the requirements of Federal, State and local authorities, including VTrans, the Vermont Life/Safety Building Code, the Americans with Disabilities Act, and the Wilmington Highway and Fire Departments.
3. All trim boards for windows and doors shall be wood.
4. Exterior clapboard shall be either wood or a composite such as "Hardi-Plank".

V. **Regarding the Waiver criteria, the Board CONCLUDES:**

Approval for construction of Applicant's building addition does not conform to the Town of Wilmington dimensional standards for the Commercial District and requires approval of a Waiver. With regards to the criteria for a Waiver, the Board concludes that this proposal *does, in part*, meet the Waiver criteria of the Wilmington Zoning Ordinance and the following standards:

513. The DRB may grant a Waiver (see also Section 520.A.5) provided all of the Waiver criteria below are satisfied:

1. **The proposal is for an addition to an existing principal or accessory building, and said addition does not increase the footprint of the building by more than five (5) percent, or by more than two hundred (200) square feet, whichever is less.** The addition to the building, while less than a five percent increase in the footprint, exceeds the 200 square foot maximum by approximately 111 feet. Therefore, in addition to the Applicant's request for a Waiver, a Variance for 111 feet will also have to be sought.
2. **The Waiver is the minimum reduction in the dimensional requirement that will enable the reasonable use of the property.** Due to the closing-up of the basement, Applicant needs the additional square feet to successfully run its restaurant. The resulting square footage will be less than the pre-flood square footage.
3. **No front setback shall be reduced to less than two (2) feet.** Inasmuch as the front setback is less than two feet, a Waiver is not being sought for the front setback. A Variance will be necessary.

4. **The proposed project will not have an undue adverse effect on the following:**
 - a. **The use of surrounding properties;**
 - b. **The character and aesthetics of the neighborhood;**
 - c. **Traffic patterns and circulation;**
 - d. **Public health, safety, and utility services;**
 - e. **Stormwater managements;**
 - f. **Water and wastewater capacity;**
 - g. **The proposed development will not impede the preservation of open land or scenic vistas, where appropriate.** There will not be an undue adverse effect on 4.a. through 4.g. In particular, traffic patterns and circulation issues are being addressed, as is stormwater management.

5. **The need for a Waiver was not self-created by past decisions of the applicant.** The need for a Waiver resulted from the damage caused by Tropical Storm Irene and the necessity of closing off the basement after future reconstruction. The loss of the basement square footage is the reason for the increased footprint and the need for a 200 square foot Waiver.

6. **The proposed project will still conform to the Town Plan and the purpose of the zoning district in which the land development is located.** Yes.

7. **For enlargements within existing setbacks in all Districts:**
 - a. **Structural enlargements may be made to non-conforming buildings and their non-conforming accessory structures which are already within the setback area, provided that the enlargement does not come closer to the property line at issue than the existing structure. These enlargements shall not be considered an increase in the degree of non-conformance.**
 - b. **An increase in the degree of non-conformance shall be interpreted as a further encroachment of the non-complying feature/element. An enlargement of the area of a structure which does not comply with a building setback does not constitute an increase in the degree of non-conformance unless the enlargement encroaches further into the non-conforming setback. For example, if a house encroaches ten (10) feet into a setback and an attached porch encroaches fifteen (15) feet into the same setback, the degree of non-compliance will only be increased for an encroachment greater than fifteen (15) feet into the setback. Thus, a porch could be increased in size along the length of the house, or the living space of the house expanded to a fifteen (15) feet encroachment without increasing the degree of non-conformance.** In regard to both subsections, a and b above, the rear addition will be further from the property line than the existing building and therefore will decrease the degree of non-compliance.

VI. CONDITIONS for the Waiver request:

This is granted subject to the following restrictions, requirements, limitations or specifications.

1. As the back (northern) addition to the non-conforming structure is 311 square feet, this Waiver is only approved for 200 square feet.
2. A Waiver is not being sought for the front porch or the handicap ramp.

VII. Regarding the Variance criteria, the Board CONCLUDES:

Approval for construction of Applicant's building does not conform to the Town of Wilmington dimensional standards for the Commercial District and requires approval of three separate Variances. First, the front porch, steps and the southwest corner of the building encroach closer than two feet to the property lines. Second, the handicap ramp along the side of the building encroaches on the Town's property line. Third, the addition to the back of the building beyond its previous footprint is 311 square feet. A Waiver is limited to 200 square feet and a 111 square foot Variance is needed. With regards to the criteria for Variances, the Board concludes that these proposals *do* meet the Variance criteria of the Wilmington Zoning Ordinance and the following standards:

- 1. That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located.** The uniqueness of the property cannot be overstated. It is bounded by two roads and the North Branch of the Deerfield River. The lot is very narrow, very small, and has an irregular shape. It is located in a floodplain and the building's balcony is directly above the floodway. The hardship has been created by the need to rebuild after Tropical Storm Irene and to comply with current handicap requirements.
- 2. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of variance is therefore necessary to enable the reasonable use of the property.** Because of the above unique physical conditions, there is no possibility that the property can be developed and the building reconstructed in strict conformity with the provisions of these regulations. With regard to the proposed addition to the rear of the building, without a Variance of 111 square feet (and a Waiver of 200 square feet), the loss of the use of the basement and its 892 square feet would prevent the reasonable use of the property as a restaurant. The Variances required for

handicap accessibility would allow for reasonable use by all clients and enable Applicant to comply with The American with Disabilities Act (see Exhibits L and M). Part of the handicap ramp will be on Town of Wilmington property and the Town has given its approval (see Exhibit K). A Variance is also needed for the proposed front stairs as they fall within the State of Vermont right-of-way. These front stairs are needed as the building is to be raised 1.5 feet to comply with flood hazard requirements. The State of Vermont (VTrans) has agreed to “allow and permit these stairs” until the land is needed for highway purposes (see Exhibit N).

3. **That the unnecessary hardship has not been created by the appellant.** The flooding during Tropical Storm Irene necessitates the reconstruction of the building to meet higher building codes for handicap accessibility and flood-proofing.
4. **That the Variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, or reduce access to renewable energy resources, or be detrimental to the public welfare.** Issuance of these Variances will not alter the essential character of the neighborhood. The Vermont Department of Historic Preservation is requiring the reconstruction of the building to be in accordance with the historic nature of the building. The requested Variances will not impair the appropriate use or development of adjacent property, reduce access to renewable energy resources or be detrimental to the public welfare. The Variances will improve public welfare by allowing handicap accessibility and discontinuing the use of basement space in the floodplain.
5. **That the Variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.** These requested Variances will represent the minimum that will afford relief and will represent the least deviation possible. The porch and roof overhangs have been reduced to the minimum possible while continuing to provide handicap accessibility and honor the historic nature of the architecture. The Variance needed for the rear addition is the minimum needed to replace the basement space – there is a net reduction in the building’s square footage.

VIII. CONDITIONS for the Variance request:

This is granted subject to the following restrictions, requirements, limitations or specifications.

1. The Applicant shall comply, as closely as possible, with the site maps and drawings, as submitted in evidence.
2. As certain elements of its site plans are still evolving, the Applicant shall comply with all of the requirements of Federal, State and local authorities, including

VTrans, the Vermont Life/Safety Building Code, The Americans with Disabilities Act and the Wilmington Highway and Fire Departments.

Thus, the Development Review Board *does approve* the application for **Historic Review District, and Variances and a Waiver in the Commercial District to allow reconstruction of a Restaurant.**

If unused, this Approval expires 1 year 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.

IN FAVOR of granting the APPROVAL FOR the above referenced application, with whatever restrictions, requirements, limitations or specifications are contained herein:

Andrew Schindel
Nicki (Polly) Steel
David Kuhnert
Gil Oxley
Paul Tonon

OPPOSED:
None

For the Board: Andrew Schindel, Vice-Chairperson

Date: 7/3/2012

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.