

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: **Peter & Sally Gore**

Owner/Applicant(s) Mailing Address: **PO Box 22, Wilmington VT, 05363**

Address of the subject property: **225 VT Route 9 East, Wilmington, VT 05363**

Tax Map #**021-22-064.000**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2012-074

Description of Case per Public Notice:

Application # 2012-074; owner: Peter & Sally Gore; Application being made for Conditional Use review to allow revision to a previously approved Antique & Flea Market to allow for additional food vendors and sheds and midweek storage of vendor vehicles; Zoning Ordinance Section 7.C & 512.C; location: 225 VT Rte 9 East.

Notice for a public hearing was published in the Valley News on: **6/29/2012**

Notice was posted in three public places on: **6/29/2012**

A copy of the notice was mailed to the applicant on: **6/28/2012**

A copy of the notice was mailed to the abutters on: **6/28/2012**

The public hearing was held on: **7/16/2012 and July 19, 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 27, 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
Timothy Gore

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 (four pages)
- A Site map
- B Abutters List
- C Revised Site map
- D Letter from the Zoning Administrator, August 16, 2011.
- E Zoning Board of Adjustment Case #689
- F Zoning Board of Adjustment Case #811B

1. The subject property is in the Commercial District of the Town of Wilmington. The property is identified as Tax Map 021-22-064.000. Pursuant to a Warning, this application was heard on July 16, 2012 and continued until July 19, 2012.
2. The Applicant has operated an antique and flea market on the property from May to October since 1982. It was notified by Wilmington's Zoning Administrator on August 16, 2011, that one of the structures on the property had not been permitted. Furthermore, vehicles and campers were being parked on the property during midweek which also was not permitted. (Exhibit D).
3. The Applicant is seeking permission to retain the present structures and, in the future, add an additional structure. It is also asking the Board to approve the midweek storage of up to 15 licensed vehicles on the property. Finally, it would like to have the Board's consent concerning the possible midweek use of the property by other organizations.
4. There are presently on the property two sheds being used as an office and for storage, as well as a trailer being used by a food service vendor. Testimony was given that Permit No. 1626, issued on June 2, 1988, determined that these structures were set back at least 55 feet from the property line. The Applicant requests that it be able to retain these structures on the property as well as possibly adding another food service structure in the future, for a total of two

sheds and two food service structures. The potential additional food service structure would also be sited in adherence to setback requirements.

5. The Applicant testified that some of its vendors would like to keep their vehicles, usually licensed trailers or vans, on the property during midweek. There is an area on the south portion of the property, beyond a drainage ditch, that would be used for this purpose. The vehicles stored there would not be visible from the highways flanking the property. Each Sunday the vehicles would be removed from their usual flea market location and taken to the storage area. The Applicant would like to store up to 15 vehicles in the storage area.
6. During the May to October flea market operations the property is empty and vacant during midweek. The Applicant has received inquiries from some organizations as to whether the property would be available to them during midweek and Applicant is requesting that the Board approve that it be allowed to do so on a single day, at its option, each week. These organizations would be allowed to set up after noon on the day before they are using the property.

II. The Board CONCLUDES:

An Antique and Flea Market is a Conditional Use in the Commercial District and requires Conditional Use review to allow modification of a previous approval. Use of the property by various groups during midweek is also a Conditional Use in the Commercial District (Section 7. C.5.). With regards to the criteria for a conditional use permit, the Board concludes that this proposal *will* conform to the requirements of the Wilmington Zoning Ordinance and the following standards:

- A. **Will the proposed Conditional Use have an undue adverse effect on the capacity of existing or planned community facilities?** No. Its flea market operations will continue as heretofore and its midweek use, if any, should not have an undue adverse effect on community facilities
- B. **Will the proposed Conditional Use have an undue adverse effect on traffic on roads and highways in the vicinity?** No. Midweek storage of licensed vehicles will reduce the number of vehicles entering and exiting the property. Midweek use of the property will not have an undue adverse effect on traffic in the vicinity.
- C. **Will the proposed Conditional Use have an undue adverse effect on the character of the area, as defined by the purpose or purposes of the zoning district within which the project is located?** No. The character of the area remains the same.
- D. **Will the proposed Conditional Use comply with specifically stated policies and standards of the Town Plan?** Yes.

E. Will the proposed Conditional Use comply with other sections of the Zoning Bylaw? Yes.

The Board hereby approves Applicant's modification of its existing permit to allow the additional structures it requests. It also approves the midweek storage of up to 15 vehicles on the southern portion of the property. It also approves the midweek use of its property, up to six times a year, on a single day each week, by outside organizations. Should Applicant wish to have the property used during midweek more than six times a year it must apply to the Board.

III. CONDITIONS:

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

1. The placement of an additional food service structure must adhere to setback regulations.
2. No more than 15 vehicles, all property of the vendors, shall be allowed to be stored midweek on the southern portion of the property.
3. No vehicles shall be allowed to be stored on other areas of the property during midweek.
4. Midweek use of the property by outside organizations shall be limited to six times a year.

Thus, the Development Review Board does **approve** the application for **Conditional Use review to allow modification to a previously approved Antique and Flea Market in the Commercial District and to have the property used during midweek by outside organizations.**

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

David Kuhnert

Paul Tonon

OPPOSED:

None

For the Board: Andrew Schindel, Vice-Chairperson

Date: 7/27/2012

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.