

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: **Ann Manwaring**

Owner/Applicant(s) Mailing Address: **PO Box 1089, Wilmington VT, 05363**

Address of the subject property: **400 VT Rte. 100 North, Wilmington, VT 05363**

Tax Map #**006-02-021.000**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2012-075

Description of Case per Public Notice:

Application # 2012-075; owner: Ann Manwaring; Application being made for Flood Hazard review to allow repair to a flood damaged structure; Zoning Ordinance Sections 820.B & 860 Cumulative Substantial Improvement & 512.C; location: 400 VT Rte 100 North.

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 7/19/2012**

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

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 (three pages)
- A Substantial Damage Estimator (five pages)
- B Abutters List

1. The hearing for Application # 2012-075 was warned for July 16, 2012. On that date it was continued until July 19, 2012 at 7:00 PM. An interim Flood Hazard Area Bylaw was adopted by the Wilmington Selectboard on September 30, 2011 to expedite permitting of non-substantially damaged structures. The interim bylaw expired on April 30, 2012, requiring Application #2012-075 to be reviewed by the Wilmington Development Review Board.
2. The subject property is in the Commercial District of the Town of Wilmington abutting the west side of Vermont Route 100 North. The property is identified as Tax Map 006-02-021.000 and is located in flood zone AE.
3. The subject property includes four separate buildings as follows:
 - Building #1** is a 3,357 square foot, mixed use building with an apartment on the second floor and commercial space on the first floor. This building was damaged by floodwaters from tropical storm Irene on August 28, 2011 and is the subject of the flood hazard review
 - Building #2** is a 700 square foot garage washed away on August 28, 2011 by floodwaters. This building is not being considered for flood hazard review as part of this application.
 - Building #3** is a 2800 square foot commercial building. This building is not being considered for flood hazard review as part of this application.
 - Building #4** is a 6300 square foot commercial building. This building is not being considered for flood hazard review as part of this application.
4. A Substantial Damage Estimate (Exhibit A) was completed on December 21, 2011 by Alice Herrick, Zoning Administrator for the Town of Wilmington. Based

upon a structure value of \$112,560 and total estimated damages of \$33,317.76, the **Building #1** substantial damage calculation was 29.6% to restore the building to pre-flood condition. The building was determined to be **not substantially damaged**.

5. **Building #1** restoration to pre-flood condition has been completed as well as substantial improvements to the building. Flood mitigation measures, including heating, electrical and foundation improvements as recommended by Brian Johnson, State of Vermont Safety Inspector, have been completed, although not required in a non- substantially damaged building. Total cumulative substantial improvements were estimated at \$55,000.

II. Regarding the Flood Hazard review, the Board CONCLUDES:

With regards to the criteria for Flood Hazard Review, the Board concludes that this proposal *will* conform to the requirements of the Wilmington Zoning Ordinance and the following standards:

Cumulative Substantial Improvement: Any combination of repairs, reconstruction, rehabilitation, addition, alteration or other improvements of a structure, during any (one) year period, in which the cumulative cost equals or exceeds 50% of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specification which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

The Board concludes, based upon the substantial damage calculation of 29.6% prepared by the Zoning Administrator (Exhibit A), that the building was not substantially damaged.

The Board concludes that the cumulative substantial improvements to **Building #1** total \$55,000 which is less than 50% of the market value of the structure before the start of construction of the improvements. The total also includes improvements recommended by Brian Johnson, State of Vermont Safety Inspector for flood mitigation measures.

CONDITIONS for Flood Hazard approval:

This request is granted. No special conditions are required as all repairs have been made and are well within the Cumulative Substantial Improvement regulations.

Thus, the Development Review Board *does approve* the application for Flood Hazard review to allow for **repair of a flood damaged structure in the Commercial and Flood Hazard Districts.**

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:

Paul Tonon
Andrew Schindel
Dave Kuhnert

OPPOSED:
None

For the Board: Andrew Schindel, Vice-Chairperson

Date: 07/27/2012

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.