

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: **Clifford and Diana Duncan**

Owner/Applicant(s) Mailing Address: **PO Box 685, Wilmington, VT 05363**

Address of the subject property: **36 West Main Street, Wilmington, VT 05363**

Tax Map #**20-20-074.000**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2014-013

Description of Case per Public Notice:

Application # 2014-013; owner: Clifford Duncan. Application being made for Conditional Use, Historic Review District and Flood Hazard review to allow renovation of an existing structure and establishment of an Retail with Recreation Use; Zoning Ordinance Section 270.B, 320, 620, 804, 811, 820; location: 36 West Main Street.

Notice for a public hearing posted in three public places and was published in the Valley News on: **2/28/2014**

A copy of the notice was mailed to the applicant and to abutters on: **2/28/2014**

The public hearing was held on: **3/17/2014 & 3/24/2014**

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: May 2, 2014

Approval expires on: April 2, 2015

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
Bruce Lessels, Zoar Adventure Tours, Witness for the Applicant
Lisa Sullivan, Spokesperson the Interested Party Petition (at 3/17/14 hearing only)
Gretchen Havreluk, Witness for the Applicant (at 3/24/14 hearing only)

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 (seven pages)

A Zoar summary

B Plot Plan

C Pella Windows

D Building photos (two pages)

E Building photo with overhang roofline hand drawn

F Estimate for proposed 2014 work

G Owner's estimate for proposed 2012 work

H Substantial Damage/Improvement calculation for 2012 flood repairs

I Abutters List

J Petition from Interested Parties (five pages)

K Letter from Josh Carvajal, March 13, 2014

M 9 Lite Half Clear Steel Exterior Double Door 6-8.

N Floor plan

O Additional information and new estimate dated March 24, 2014

1. Construction Information – 2 pp

2. Revised Estimate/Materials 3/24/14 – 2 pp

3. Floor Plan (same as Exhibit N)

P. International Building Code 2009/Product Data Sheet

1. Building Code excerpt – 2 pp

2. Formular 250 Product Data Sheet

Q. Emails between Zoning Administator Alice Herrick (3/18/14) and Josh Carvajal, ANR (3/24/14) 2 pp.

R. Letter from Duncan with response to Carvajal email dated Marc 24, 2014. Cover letter plus 3 pp.

S. 2012 Substantial Damage Estimator. 5 pp

T. FEMA Flood Damage-Resistant Material Requirements Booklet – August 2008

U. Making Substantial Improvement and Substantial Damage Determinations - FEMA

1. The subject property is in the Village District of the Town of Wilmington. The property is identified as Tax Map 20-20-074.000. It is also in the Historic Review District and subject to Flood Regulations.
2. The property has one building. It was badly damaged by Tropical Storm Irene in August of 2011. In April of 2012, under the Interim Flood Regulations, \$18,932.90 was approved for repair of flood damage. The building was valued at \$105,066. These repairs were never done. The Applicant was granted an extension on this permit until April, 2016. The Base Flood Elevation (BFE) is approximately 1509 feet, about one to two feet above the floor of the building.

3. Although the building is in the Historic Review District, it is not considered an historic building and is not eligible for the historic building exemption in the Flood Regulations. It was originally a blacksmith shop. While it has retained its shed or barn-like look, it has had extensive renovations and exterior changes throughout the years.
4. There has been no business operating on the property since Irene but the property has been used for retail sales since before the Duncans bought the property in 1972. The Applicant proposes to reopen as a retail operation. It would sell outdoor equipment and supplies such as kayaks, standing paddleboards and snowshoes. It would also offer equipment rentals and tours. Tour clients would gather at the property and then be transported to other sites. Clients may rent equipment and transport it elsewhere or leave from the property and use the Town trail system that goes through the property.
5. Hours of operation would be seven days a week from 9 am to 8 pm year round. It is possible that occasionally a tour might return later than 8 pm but the store would not be open to the public after 8 pm. During the hours that the store is open, there would be one employee for in-house sales and rentals. When tours are planned, additional employees would be on-site as guides or drivers.
6. Larger items for sale would be displayed outside.
7. There is limited on-site parking for approximately four to six vehicles. The exact lay-out of the parking has not been determined and the possible installation of a public sidewalk may impact the parking area design. There will be a clearly delineated pedestrian access for Reardon's Bridge. This access will likely be along the western side of the property.
8. The Applicant proposes the following exterior changes:
 - a. Move the main entry door farther toward the west. (See Exhibit N for location.) The double doors will be replaced with similar looking doors. They will be fiberglass. (Exhibit O1).
 - b. Install two sets of two double-hung windows on the easterly end of the front of the building. (Exhibits C & N)
 - c. Remove the two windows on the first floor east side and replace with siding.
 - d. Replace the east side attic window with one that is similar in size and design to the front side double-hung windows.
 - e. Leave the west side window but install muntins to more closely match the front window.
 - f. As necessary, replace and paint siding to match the existing vertical wood siding.
 - g. Change the roof of the porch so that it is connected to the main roof. This will extend the main roofline. Replace the four posts of the porch and re-install the decorative scrollwork at the top of the posts.
 - h. The exterior staircase and rear double freight doors will remain.
 - i. Install an awing style cellar window on the east end of the building. The placement will allow water to enter the crawl space during flood events in order to neutralize outside water pressure. (Exhibit O1)

8. The Applicant proposes the following flood mitigation measures:

- a. Reinforce the existing stone foundation with poured concrete and cap the top of the foundation. New truss beams will be installed and anchored to the foundations. The bolts will be ½ inch diameter and installed so as to meet international building code recommendations. (Exhibit P1) A concrete floor will be poured over the existing gravel floor in the crawl space to reduce moisture.
- b. The underlayment sheathing will be high quality ½ CDX fir with exterior glue laminate construction. (Exhibit P1)
- c. The removal of the two first floor east windows will help protect the interior during flooding.
- d. Existing sheetrock will be replaced with flood and mold resistant blue-board and painted with water based paint. (Exhibit P1) This sheetrock will be used at least two feet above BFE.
- e. The new furnace will be placed at least seven feet above floor level. The fuel tank will be placed in the rear unimproved part of the building and anchored to the floor. (Exhibit P1) The building will not have air conditioning.
- f. The entire wood floor will be replaced with flood resistant beams and subfloor. The floor covering will be vinyl and asbestos tile with asphaltic adhesive.
- g. Rigid insulation will be used for at least the first six feet above the floor.
- h. All circuit breakers and electrical outlets will be at least five feet above the floor.
- i. A ball valve will be installed on the sewer line.
- j. The removal of the two eastern windows will help stop water from entering the building during flood events.

9. The Applicant is proposing for his project to fall below the 50% figure of Substantial Improvement/Damage Repair so that he would need to meet only Article VIII 820.B.1 of the Wilmington Flood Regulations.

10. Various figures for the value of the building were presented. In the 2012 Substantial Damage Estimator (Exhibit S) the assessed value for the building pre-flood was \$105,066. The value was lowered to \$75,000 by the Wilmington Listers as the post-flood value. The Applicant presented other ideas for figuring out the valuation but did not supply any exhibits. No professional appraisal has been done on the property in recent years.

11. Exhibit O2 is an estimate and materials list from Contractor Douglas Furlon dated March 24, 2014. This estimate includes all of the repairs and improvements listed above and totals \$52,414.

II. The Board CONCLUDES:

A. Regarding the Conditional Use Review, the Board CONCLUDES:

The definition of Retail Business in the Wilmington Zoning Regulations is "A business delivering goods, or providing services to the general public." With regards to the criteria for

Conditional Use review, the Board concludes that both the sales and rental of equipment and the running of tours from the site meet the definition in the Wilmington Zoning Ordinance for a Retail Business and since this property has been used for a Retail Business since before 1972, it does not require review under the Conditional Use Criteria. All the activities and sales described by the Applicant through testimony and exhibits are considered by this Board to be a Retail Business.

The subject property is also in the Historic Review District and the Flood Hazard zone and requires review under Historic Design and Flood Hazard Regulations.

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

With the many exterior changes in the building throughout its history, there is little historical value in the building. However, it has retained its barn-like shape and appearance. The proposed exterior changes will not change that look. In fact, the change in the porch roofline will enhance the building in that the porch will look less like an “add-on”. The change in the attic window and the addition of muntins to the west window will add consistency. The change in the placement of the front door will help with pedestrian circulation in that most of the outside activity will be on the western side of the building. The removal of the eastern windows will have little or no impact on the design. Any replaced siding will be wood.

C. 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:

1. The subject property is in the SFHA (AE zone) and requires Flood Hazard review to allow renovation, improvement and damage repair.
2. Article VIII 820.B. 1 Floodway Fringe Areas (i.e., special flood hazard areas outside of the floodway)

1. All Development – All development shall be reasonably safe from flooding and:

- (a) designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood.** The addition of concrete around the existing stone foundation and the anchoring of the building to the concrete will prevent flotation, collapse or lateral movement.
- (b) constructed with materials resistant to flood damage.** The Applicant intends to use many materials such as insulation, sheetrock, paint, plywood and trusses that are resistant to flood damage. (See above)
- (c) constructed by methods and practices that minimize flood damage.** The Applicant is using flood resistant materials up to and above BFE.

- (c) **constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.** The electrical and heating equipment will be located above BFE. A ball valve will be installed. There will be no air conditioning equipment installed in the building.
3. In Exhibit U, Making Substantial Improvement and Substantial Damage Determinations, it states on page 4-4, "Furthermore, sometimes these buildings also are improved beyond their pre-damage condition. If proposed, then the cost of improvements must be included along with the cost to repair to make the SI/SD determination." Therefore, the Board will use the total of all of the costs of improvements and damage repair in figuring out whether there is Substantial Improvement/Damage.
4. The Board further concludes that the Applicant has a valid permit for repair of flood damage. In that permit the building is valued at \$105,000. The Board is using this amount as the value of the building. The Board accepts the figure of \$52,414 as a reasonable amount to do both repairs and improvements. The amount of \$52,414 is just under 50% of the value of the building and, therefore, the Applicant is not proposing to do Substantial Improvement and Damage Repair. As such, he needs to only meet the criteria listed above. If the Applicant obtains an appraisal from a Professional Appraiser he may reapply to this Board for reconsideration of these figures.

III. CONDITIONS:

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

A. CONDITIONS for Conditional Use:

1. As the Board concluded that the Applicant is continuing an existing use there are no conditions other than the use shall be substantially as presented. This includes hours of operation and the types of sales and activities on the premises.

B. CONDITIONS for Historic Review District:

1. The design and location of the windows and doors shall be as presented in testimony and as shown in Exhibits M, N and C. Muntins shall be added to the west-side window.
2. Any replacement of exterior siding shall be installed and painted to closely match the existing siding.
3. There shall be a clearly delineated parking area. The pedestrian access to the bridge shall also be clearly delineated and protected from vehicular use.

C. CONDITIONS for Flood Hazard approval:

1. All the improvements and repairs listed above that mitigate future flooding damage shall be completed. Flood resistant materials shall be used whenever possible and shall be extended above BFE.
2. The building shall be anchored so as to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood.
3. Electrical outlets and fuse boxes shall be above BFE. The furnace shall be above BFE. The fuel tank shall be in the back portion of the building and shall be anchored.
4. The Applicant shall spend no more than \$52,499 on Improvements and Damage Repair within the 12 months of the signing of this decision.

Thus, the Development Review Board does **approve** the application for **Conditional Use review to allow for the continuation of Retail Sales in the Village/Historic Review District.**

Thus, the Development Review Board does **approve** the application for **Historic Design review in the Village/Historic Review District.**

Thus, the Development Review Board does **approve** the application for **Flood Hazard review to allow commencement of Repairs and Improvements in the Village/Historic Review District.**

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:

Nicki (Polly) Steel
Sherry Brissette
Sheila Osler

OPPOSED:

None



For the Board: Polly Steel, Chairperson

Date: April 1, 2014

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.