

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: **(1) 72 Acres LLC, (2) Mount Snow Region Chamber of Commerce, (3) Super Main Structures, LLC, (4) Peter Wallace, (5) Robert A. Marzelli and Rosalyn Marzelli et al, (6) Ronald Beck**

Owner/Applicant(s) Mailing Address: **(1) P.O Box 547, Wilmington, VT 05363, (2) 21 West Main St., Wilmington, VT 05363, (3) 70-09 73rd Place, Glendale, NY 11385, (4) P.O. Box 1198, Wilmington, VT 05363, (5) P.O. Box 935, Wilmington, VT 05363, (6) P.O. Box 803, Wilmington, VT 05363**

Address of the subject property: **17-37 West Main Street**

Tax Map: #2020063, 2020064, 2020066, 2020068, 2020067, 2020068, 2020069, 2020070

A copy of the request is filed in the office of the Board and is referred to as: **#2016-002**

Description of Case per Public Notice:

Application # 2016-002 : Owner(s): **(1) 72 Acres LLC, (2) Mount Snow Region Chamber of Commerce, (3) Super Main Structures, LLC, (4) Peter Wallace, (5) Robert A. Marzelli and Rosalyn Marzelli et al, (6) Ronald Beck**

Requesting: The construction of 595 linear feet of sidewalk from 17 to 37 West Main Street to include necessary railings, three lamp posts, one new crosswalk and rebuild a retaining wall on the north side of West Main Street.

Notice for a public hearing was published in the Valley News on: **March 3, 2016**

Notice was posted in three public places on: **March 3, 2016**

A copy of the notice was mailed to the applicant on: **March 2, 2016**

A copy of the notice was mailed to the abutters on: **March 2, 2016**

Public hearings were held on March 21, 2016, March 28, 2016 and April 5, 2016

Site Visit was conducted: No site visit was conducted

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 Environmental Court.

Appeal period for this Case expires on: May 6, 2016

Approval expires on: April 6, 2018

In *addition* to the Applicant/Agent the following persons, heard by the Board in connection with this request, were determined by the Board to be “interested persons”: Copies of this decision have been mailed to those persons listed below.

None

The following presented testimony on behalf of the Applicant or an Interested Person:

Gretchen Havreduk, agent for the applicants at all hearings
Anna Drozdowski, Wilmington Works at the March 28, 2016 hearing
Scott Murphy, Wilmington Town Manager at the April 5, 2016 hearing.

EXHIBITS

The following Exhibits were placed in evidence by the Applicant or Interested Person:

1. Applications by:
 - a. 72Acres, LLC
 - b. Mount Snow Region Chamber of Commerce
 - c. Super Main Structures, LLC
 - d. Peter Wallace
 - e. Robert A. Marzelli and Rosalyn Marzelli et al
 - f. Ronald Beck
2. A set of plans entitled West Main Street Sidewalk, Wilmington, Vermont, Contract 2016-1, Permit Set by Dufresne Group as follows:
 - a. General Notes, Legend and Abbreviations dated February 20, 2016
 - b. Sidewalk Site Plan and Layout Plan dated February 20, 2016, being sheet C1
 - c. Sidewalk Profile and Cross Sections, dated February 20, 2016 being sheet C2
 - d. Sidewalk Typical Details, dated February 20, 2016 being sheet C3
 - e. Retaining Wall Profile and Details, dated February 20, 2016 being sheet C4
3. A portion of FEMA National Flood Hazard Layer showing the location of the project being Panel 50025C0451E effective 9/28/2007.
4. Letter from Theresa Gilman, Permitting Services Supervisor, Agency of Transportation to Scott Murphy dated February 23, 2016 Subject: Wilmington, VT(, L.S. 148+35-154+25 LT & RT with attached draft list of Special Conditions
5. Copy of an e-mail from John Broker-Campbell, Regional Floodplain Manager, Department of Environmental Conservation to Craig Ohlson dated March 21, 2016 Subject: Wilmington – Route 9 sidewalk
6. Copy of a plan entitled Sidewalk Site Plan and Layout Plan, Conceptual Submittal, by Dufresne Group dated October 15, 2015
7. Letter from Christina M. Haskins, PE of Dufresne Group dated March 25 2016
8. Copy of Power Point presentation by Gretchen Havreduk made March 21, 2016
9. Specifications for 1843 LED Carson City Series light fixtures from Sternberg Lighting.
10. Representation of light dispersion by VisibleLight dated March 25, 2015.

11. Copy of an e-mail from Stephanie Gile, District 2 Coordinator, Natural Resources Board dated March 22, 2016.
12. VTrans Standard T-133, Light Pole Foundation Details, dated Dec 21, 2015.
13. VTrans Standard T-45, Square Tube Sign Post and Anchor, dated Jan 2, 2013
14. Copy of undated correspondence from Chrissy Haskins, PE of Dufresne Group, relative to the anchoring of the light poles and detectable warning surfaces.

APPLICABLE DISTRICT

Finding of Fact: Subject properties are identified as Tax Map: #2020063, 2020064, 2020066, 2020068, 2020067, 2020068, 2020069 and 2020070. Applications

Conclusions of Law: The proposed development lies in the Historic Review portion of the Village District pursuant to Article II, Section 270 B and Article VI, Section 603. Review is required as the development proposes significant changes to the site. Section 630 D 6. The proposed development also lies within the Flood Hazard Area as shown on Exhibit 3 requiring consideration under Article VII. Flood Hazard Area Regulations.

USES

Findings of Fact: The applicants are requesting construction of a sidewalk, railing and lighting and not a use. The proposed development is not listed as a conditional use in the Village District. A distinction is made between “construction”, as this is, and “uses” in Section 805 of the Flood Hazard Regulations.

Conclusions of Law: The proposed development is for approved uses for this district. .

CONSTRUCTION ASPECTS

Findings of Fact: The sidewalk will be 595 linear feet running from the easterly end of 17 West Main Street, Bartleby’s Books, westerly to the driveway entrance to the Wilmington Inn. It will generally be 5 feet wide except for a portion within 27-31 West Main Street which will be 4 feet wide. It will slope at the ADA required pitch at the rises to 27 West Main Street (Hayseed) and to 31 West Main Street abutting Folly Food. Construction is to be of concrete. Granite curbing will replace existing curbing. Construction shall be as shown on plans in Exhibit 2.

The railing along the raised portion of the sidewalk shall be approximately 185 feet long and 44 inches high. Design shall be similar to Carlton – Laurel with a black color. Railings will be set and secured into the rebuilt wall Testimony of Havreluk. Exhibit 2f

The present wall will be removed and rebuilt with drainage within the wall exiting at either end into catch basins which will be rebuilt. Gretchen Haverluk, agent for the applicants, verbally modified the application to change the block construction of the wall to laid up stone. Testimony of Havreluk and Exhibit 2f

Crosswalk to be located as shown on Exhibit 2b

Lighting will be located as shown on Exhibit 2b, two replacement lights at 27 and 31 West Main and a new fixture at the Wilmington Inn entrance. Wiring for the three 8 foot poles will run by conduit under the crosswalk and sidewalk. Instruments will be Carson City black on polls not to exceed 8 feet in height with an LED bulb of 3750 lumens. Testimony of Havreluk , Exhibit 9.

The crosswalk warning sign will be located in the Route 9 shoulder 375 feet westerly of the crosswalk and will meet VT Department of Transportation guidelines. Testimony of Havreluk

FLOOD HAZARDS DEVELOPMENT PERMIT REQUIRED- SECTION 805

Findings of Fact: The project is within the floodway in the Town of Wilmington. The construction of a flat sidewalk with ramping on a lowered retaining wall will provide a lower profile for any flood waters. The required railings, which will replace existing structures, will be of aluminum construction and anchored into the wall which will have drainage within its construction. Light fixtures will be located away from the wall edge and are well anchored. The components will be adequately anchored to prevent flotation, collapse or lateral movement during a base flood and are constructed of concrete and aluminum, materials resistant to flood damage. Testimony of Havreluk Exhibits 3, 2f, 12-14

Conclusions of Law: The proposal minimizes the risk of flood damage with drainage to reduce the exposure to flood hazards.

FLOOD HAZARDS DEVELOPMENT STANDARDS – SECTION 820

A1. Floodway Areas

Findings of Fact: Section 820 prohibits any development within a floodway without proper certification. A registered professional engineer has certified that the project will result in no increase in flood levels during the occurrence of a base flood event. Exhibit 7

Conclusions of Law: This requirement has been met.

HISTORIC REVIEW DISTRICT SITE REVIEW CRITERIA SECTION 610

A. Relation to Its Environment:

Findings of Fact: The creation of a sidewalk running from the Vermont House in the East to the Wilmington Inn in the West ties the north side of West Street together in a pedestrian friendly fashion. The setback and delineation of the walkway from the highly traveled Route 9 creates a safer pathway. The lighting fixtures echo those on the bridge and begin the lighting scheme in the west of town. Light fixtures will cast light downward. Testimony of Havreluk, Exhibits 2b and 9

Conclusions of Law: This criterion is satisfied.

B. Preserve the Landscape:

Findings of Fact: Two small apple trees on 31 West Main will be removed and replaced, if necessary, with small, salt tolerant trees of the landowners preference. Peter Wallace testified that there was a 70 foot white spruce tree on his property at 33 West Main that was the subject of a comment in an earlier design of the sidewalk. The comment required the presence of an arborist when working within the root structure of the tree. The present site plan moves the sidewalk location and removes the comment. Mr. Wallace has requested the Town be financially responsible for the removal of the spruce if it should die within one year. At the hearing on March 28, 2016 Mr. Wallace withdrew the request to the Board indicating he will pursue other avenues. Exhibit 2b. Testimony of Havreluk, Testimony of Wallace and Exhibit 6.

Conclusions of Law: The replacement of the trees on 31 West Main Street meets this criterion.

C. Provide Efficient and Effective Circulation.

Findings of Fact: The project improves the pedestrian flow from east to west along the northerly

side of West Main street by establishing a designated walkway and removing the choke point and barrier between the Hayseed complex (27-31 West Main Street) and 33 West Main Street (Folly Foods). The new crosswalk with the “landing” on the southerly side of West Main Street adjacent to Reardon Bridge gives safe access to that portion of West Main Street. Exhibit 2b and Exhibit 8
Conclusions of Law: This criterion is satisfied.

D. Provide for Natures Events:

Findings of Fact: A small amount of impermeable surface is added by the project as the development is mainly reconstruction and delineation, limiting any increase in storm water runoff. Dufresne Group, Consulting Engineers, has said that the project will not result in an increase in flood levels during a base flood. Storm drain at 27 West Main will be rehabilitated. Gretchen Havreluk testified that snow and ice removal will be the responsibility of the Town. It is facilitated by the ramping at 27 and 33 West Main Street.

Conclusions of Law: This criterion is satisfied. Testimony of Havreluk, Exhibit 2b and Exhibits 7 and 8

E. Integrate Utilitarian Features:

Findings of Fact: Electrical wiring will be underground and cross the road at the cross walk at the westerly end of the project as shown on Exhibit 2b. Underground conduit for electrical wiring will run underneath the sidewalk to serve the lighting fixtures at 27-31 West Main Street. Testimony of Havreluk, Exhibit 2b.

Conclusions of Law: This criterion is satisfied.

F. Protect Wilmington’s Heritage:

Findings of Fact: While some green space is lost in the 27-31 West Main Street section and the 35-37 section, this is offset by the increase in the integration of the area and safety of pedestrians. The new lighting which begins at the crosswalk at the westerly end of the project and continues with additional lights at 31 West Main and 27 West Main reflects the lighting on the bridge and gives a night time flow as well as enhancing safety. The reduction of the height of the retaining wall gives the appearance of greater accessibility to the buildings.

Conclusions of Law: This criterion is satisfied.

G. Consider Local Environs

Findings of Fact: The sidewalk portion of the project will increase lot coverage to a small degree but not enough to impinge upon the neighborhood. The three lights, two of which are replacements, are spaced sufficiently far apart to not create undue brightness in the area. Exhibits 1b, 9 and 10.

Conclusions of Law: This criterion is satisfied

SIGNS ALLOWED/EXEMPT SIGNS NOT (NOT REQUIRING A PERMIT) SECTION 424

Findings of Fact: A warning sign for the crosswalk will be placed in the shoulder of the east bound lane of Vt Route 9 375 feet westerly of the crosswalk at the westerly end of the project. The sign will correspond to the requirements of the Vermont Agency of Transportation and be maintained by the Town of Wilmington. The sign is a “government sign” as defined in Section 424 D and exempt from permitting.

CONDITIONS:

The application for development is **approved** with the following conditions, restrictions, requirements, limitations and specifications.

1. To maintain the character of the area and the district, the lighting fixtures shall be operated from dusk to dawn.
2. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits 2, 12 and 13 the testimony provided. Any changes to the plans will require an administrative approval from the zoning administrator or a review by the Development Review Board, in conformance with the Zoning Ordinance.
3. Development and construction shall be managed to address all safety hazards.
4. Noise and vibration will be minimized during construction to so as to not negatively impact neighboring properties between the hours of 8 PM and 8 AM.
5. All facilities, crosswalks and walkways will be handicapped accessible compliant with ADA.
6. All sidewalks, crosswalks, railings, points of intersection between the sidewalk areas of vehicular movement and parking will be made safe for the public and compliant with VTrans safety recommendations and requirements.
7. All outdoor lighting will be shielded and downcast, with the minimum lumens necessary to meet the needs of the lighting purpose. Lighting will not impair the drivers of motor vehicles and shall not produce undue glare into any residence in the area of 17 to 37 West Main Street.
8. Lighting fixtures will provide diffused lighting to reduce glare.
9. Storm water runoff will be directed to the storm water drains and, while not a condition, applicants are encouraged to create additional pervious areas for the absorption of storm water.
10. All paved surfaces will be maintained during hours of use for public safety including repairs, plowing, sanding, de-icing and such other maintenance as may be required.

The applicant is responsible for obtaining all state and federal permits.

If unused, this Approval expires 2 years 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.

Town of Wilmington, Zoning Administrator reserves the right to monitor compliance with this decision and all decisions issued by the Development Review Board

IN FAVOR of granting the APPROVAL FOR the above referenced application, with whatever

restrictions, requirements, limitations or specifications are contained herein:

Wendy Manners
Tim Hall
Fred Houston

OPPOSED:

None

ABSTAINING:

None

For the Board: Wendy Manners, Chairperson

Date: _____

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.