

**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 Duncan**

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

Address of the subject property: **36 West Main St**

Tax Map: # **020-20-074**

A copy of the request is filed in the office of the Board and is referred to as: **#2016- 030**

Description of Case per Public Notice:

Application # **2016-030** : Owner(s): **Clifford Duncan**
Requesting: **to construct a ramp to access Reardon's Bridge.**

Notice for a public hearing was published in the Valley News on: **June 16, 2016**

Notice was posted in three public places on: **June 16, 2016**

A copy of the notice was mailed to the applicant on: **June 16, 2016**

A copy of the notice was mailed to the abutters on: **June 16, 2016**

Public Hearings Held on;

June 5, 2016 – Cancelled due to lack of quorum

July 11, 2016 – Recessed to July 18th due to lack of applicant attendance

July 18, 2016 – Site visit

July 18, 2016 – Hearing recessed to August 15 for additional information

August 15, 2016 – Hearing recessed to September 29th for additional information

September 29, 2016 – Hearing recessed to October 24, 2016 for additional information

October 24, 2016 – Hearing recessed to December 19, 2016 for additional information

December 19, 2016 – Hearing recessed to March 20, 2016 for additional information

March 20, 2017 – Final Hearing held, case closed

Appeal period for this Case expires on: April 22, 2017

Approval expires on: March 22, 2019

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

- Cliff Duncan, Applicant and land owner
- John Gannon, Agent for the applicant, Selectboard
- Merrill Mundell, Engineer
- Barry Reardon, Bridge Philanthropist

EXHIBITS

The following Exhibits were placed in evidence by the Applicant or their Agent:

1. Application
2. Sketch Plan, Reardon's Crossing, May 3, 2016 by Merrill A. Mundell, Jr. P.E.
3. Plan View, Reardon's Pedestrian Bridge, June 1, 2016 by Merrill A. Mundell, Jr. P.E.
4. Elevations, Reardon's Pedestrian Bridge, Wooden Access Ramp, y Merrill A. Mundell, Jr. P.E.
5. June 6, 2016 3:05 pm email; John Broker Campbell to Craig Ohlson
6. June 23, 2016 4:36 pm email; Brandon Kibbe, TransCanada to Craig Ohlson
7. Easement Deed for bridge and foot path construction from Diane Duncan to Town of Wilmington dated August 7th 2012
8. Warranty Deed of Sale from Reardon to Town of Wilmington dated June 4th 2013
9. DRB Decision 2015-007, signed and dated March 28, 2015, extending decision 2014-003
10. DRB Decision 2014-003 signed and dated March 14, 2014, authorizing bridge construction
11. Flood Hazard Area map
12. John Broker-Campbell ANR March 14, 2017 letter
13. Craig Ohlson, Zoning Administrator, email of March 17, 2017
14. Karl Anderson, FEMA email of March 15, 2017
15. Ramp Design, Merrill Mundell, Jr. P.E. March 6, 2017
16. Windham Architectural Metals, Gordon Moore, Wilmington ramp - elevation
17. Windham Architectural Metals, Gordon Moore, Wilmington ramp – overhead view

OWNERSHIP OF LAND/BRIDGE

Finding of Fact: Applicant provided written documentation from TransCanada indicating that if any of the bridge or the ramp are on TransCanada land, they approve developing on those lands (exhibit 6). Applicant presented an Easement Deed for bridge and footpath construction from Diane Duncan to the Town of Wilmington dated August 7th 2012 (exhibit 7). Applicant presented a Warranty Deed dated June 4th, 2013 transferring ownership of Reardon's Bridge from Mr. Reardon to the Town of Wilmington. (Exhibit 8)

Conclusions of Law: The town is the legal owner of Reardon's bridge and has obtained easement rights from the landowner on the Easterly side of the bridge, providing legal right-of-way to develop the bridge and footpath on the easterly side of the bridge as well as the approval of TransCanada. The town has the legal right to the lands to develop the footpath, including a ramp, and the bridge.

APPLICABLE DISTRICT

Finding of Fact: Subject property is in the Historic District.is identified as Tax Map: # **020-20-074**

Conclusions of Law: The proposed development lies in the Historic District.

USES

Finding of Facts: There are no changes in use for this property

Conclusions of Law: N/A.

FLOOD HAZARD

Land to Which These Regulations Apply

Finding of Facts: The regulations apply for development in all areas of the Town of Wilmington identified as areas of special flood hazard in and on the most recent flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) and the National Flood Insurance Program (NFIP)". The proposed development area is in the Flood Fringe Area of a Flood Hazard District (exhibit 11).

Conclusions of Law: Flood Hazard District regulations are applicable to the proposed development which lies within the Flood Fringe Area of the North Branch of the Deerfield River.

Permitted Uses

Finding of Facts: This application is for a ramp to expand accessibility to Reardon's Bridge, a recreational access way for scenic viewing of the North Branch of the Deerfield River as the entry point to a scenic hiking trail. Permitted Uses in the Flood Hazard District allow for "open space" uses for Recreational Uses are Permitted provided "they do not require the erection of structures, storage of materials, importing fill from outside the Flood Hazard area, do not obstruct flood flows and will not increase the flood level within the floodway during the occurrence of a base flood or increase off-site damage potential." under this Section. This application requests the erection of a structure to erect a ramp to access Reardon's Bridge.

Conclusions of Law: The proposed access is not a Permitted Use under Flood Hazard Regulations.

Conditional Uses

Finding of Facts: Except for Permitted Uses as defined in Section 605, all other uses listed for the zoning district that fall within a designated flood hazard area may be Permitted only upon the granting of a Conditional Use Permit by the Development Review Board.

Conclusions of Law: This application is for a "Conditional Use".

Development Standards – Flood Fringe Areas

Finding of Facts: Consistent with National Flood Insurance Program (NFIP) this ordinance requires development within the Flood Fringe Area: "shall be reasonably safe from flooding and:

- i. designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure during the occurrence of the base flood,
- ii. constructed with materials resistant to flood damage,
- iii. constructed by methods and practices that minimize flood damage."

To be "reasonably safe from flooding" a "flow-through design" is recommended by John Broker-Campbell of the Agency of Natural Resources. (Exhibit 5) The proposed ramp is a flow-through design and will be of a "material resistant to flood damage", metal and wood. (Exhibits 15, 16, & 17) Railings will be made of metal, walkways and support structures will be made of wood. The wooden walkway will match the type of wood used on the bridge walkway. The support structure will be made of 8 x 8 pressure treated wooden posts. Walkway support beams shall be 2 x 10 pressure treated lumber. The ramp will be "adequately anchored to prevent floatation, collapse, or lateral movement during the occurrence of a base flood" by securing pressure treated 8 x 8 support

beams with metal brackets to cement sonatube foundations sunk to a minimum depth of five (5) feet or until ledge is encountered.

These methods have been found to be “appropriate methods and practices to minimize flood damage”. Ramp plan design, materials, and engineering methods of anchoring have been reviewed by John Broker-Campbell of the Agency of Natural Resources (Exhibit 12) and discussions have taken place between John Broker-Campbell and Craig Ohlson, Zoning Administrator (Exhibit 13) confirming that the proposed method of attaching pressure treated posts to sonatubes with a metal bracket is considered to be “adequately anchored to prevent floatation, collapse, or lateral movement”, as is required by this ordinance and the National Flood Insurance Program (NFIP). The proposed materials, pressure treated wood and metal, are “resistant to flood damage”. The proposed design applies “methods and practices which will minimize flood damage”. Further, FEMA representative Karl Anderson has consulted with John Broker-Campbell on this project and provided his consenting opinion on the proposed project (Exhibit 14).

Conclusions of Law: Standard is met.

DIMENSIONAL REQUIREMENTS

Finding of Facts: Dimensional requirements of lot size, frontage, building height, and setbacks are not applicable. The Historic District has a zero setback. Setback requirements are met.

Conclusions of Law: Dimensional Requirements are met.

Section 610: Site Review Criteria (as was in effect at the time of this application)

A. Relate development to its environment: Conformance with established neighborhood scale.

Finding of Facts: The proposed ramp is in conformance with the scale of the established neighborhood and the bridge that it will provide access to. The ramp will utilize a scaled down version of the bridge design (applicant testimony), harmonizing with and retaining the scale and character of the bridge as the focal point,

Conclusions of Law: Standard 610 A is met.

B. Preserve the landscape: Preserve and enhance the landscape. If natural features are removed, they shall be replaced.

Finding of Facts: The proposed ramp design preserves and enhances the landscape by mimicking the design of the walking bridge in railings and color. Landscaping and aesthetics shall be enhanced by trimming foliage along Route 9 for improved visibility of the bridge when approaching the town from the West. Upon completion of ramp construction the Reardon’s Crossing sign shall be replaced at the entrance to the ramp/bridge.

Conclusions of Law: Standard 610 B is met.

C. Provide efficient and effective circulation: For vehicular and pedestrian circulation, ensure safety in the access points of walkways and sidewalks to public streets for separation of vehicular traffic and parking areas in relation to pedestrian traffic and access ramps for the disabled.

Finding of Facts: On July 18, 2016 Cliff Duncan testified that a state sign moved to just before Reardon’s bridge approach from the West impedes visibility of pedestrians at the site of the proposed ramp and the sidewalk. He believes this is a significant safety concern and that the state should be asked to move the sign back to where it had been previously. In response discussions with the state on this safety concern, the state has agreed to remove the bottom two signs for improved visibility and safety (John Gannon testimony).

The location of the new sidewalk crossing area was discussed with question of where the ramp entrance would lie in relation to the sidewalk previously approved for installation by the town. The town has agreed to relocate the proposed sidewalk to meet the ingress/egress point of the ramp (John Gannon testimony).

Traffic calming steps have been taken to slow route 9 traffic coming from the west. An electronic speed display has been placed west of the proposed development location. (John Gannon testimony)

The new ramp will not extend eastward beyond the existing stairs, providing adequate separation of pedestrian and vehicular traffic. Entrance to the stairs will be from Cliff Duncan's side parking lot (currently Zoar Outdoor). (John Gannon testimony and Exhibit 2)

While the proposed ramp will not meet ADA standards applying to other structures as it does not have the physical space to make a lengthier slope this ramp, as part of a trail system, is not required to satisfy ADA requirements. ADA requirements do not apply to trail systems other than those in National Parks. (John Gannon testimony) While trails are not required to comply with ADA, a disabled person seeking to use the trail system can access it by driving to the east side of the bridge, making the trail accessible for all. (John Gannon testimony)

Non-skid strips will be added to the ramp for pedestrian safety against slipping. (John Gannon testimony)

Conclusions of Law: The proposed ramp, sidewalk, and traffic calming will optimize vehicular and pedestrian circulation and ensure safety in the access points of walkways and sidewalks to public streets for separation of vehicular traffic and parking areas in relation to pedestrian traffic. This hiking trail access point does not require ADA conformity (applicant testimony). Standard 610 C is met.

D. Provide for nature events: Address storm water runoff so that neighboring properties and/or public storm water drainage systems are not adversely effected. Design should address the effects of rain, snow and ice at structure entrances and walkways. Provision should be made for snow and ice removal from circulation areas.

Finding of Facts: The applicant, represented by John Gannon, testified that there would be no impact on stormwater drainage or runoff. Further, he testified that the hiking trail that is accessed by the bridge and ramp is a part of trail system that is not maintained in winter. The trail, bridge and ramp will not be shoveled or sanded. Anyone who accesses the trail in winter will do so through the snow utilizing winter hiking techniques.

Conclusions of Law: Installation of structure support will not increase stormwater runoff or cause erosion. As a part of a network of hiking trails, the bridge and its access ways will not be maintained in winter. Winter hiking trail access is by winter hiking techniques. Standard 610 D is met.

E. Integrate utilitarian features with the design: (storage areas, machinery and equipment, service areas, loading areas, utilities, meters, lighting etc.) shall be subject to setbacks, screening planting or other screening methods or mitigation, as is reasonably required to prevent their being incongruous or incompatible with existing or proposed structures and surrounding properties. They shall be incorporated into the structure design, not added as an afterthought.

Finding of Facts: The utilitarian features on the ramp, the support structure shall be painted green to match the bridge support structures (applicant testimony), so as to be harmonious with the bridge

and prevent it from being “incongruous or incompatible with existing and proposed structures”. Painting of wooden elements of the structure (other than the walkway which will be natural wood) will be completed within 18 months of bridge completion, allowing 12 months for the pressure treated lumber of cure and 6 months for painting.

Conclusions of Law: Standard 610 E is met.

G. Consider the local environs: Minimize any adverse impact on light, air, and water resources or noise or temperature levels of the immediate environment.

Finding of Facts: Water resources and flooding have been considered in the Flood Hazard review of this application. There will be no impacts on light and air.

Conclusions of Law: This provision is not applicable.

Section 620 Building Review Criteria

A. Form Relationships

1. **Style:** The development should be of similar historic architectural style(s) to that found within the adjoining and neighboring development. If none, then it should “promote architectural styles found in the village.”

Finding of Facts: The ramp has been designed to be consistent with, but on a smaller scale than, the existing bridge rails and walkway. The bridge and ramp are compatible with the style and character of the neighborhood.

Conclusions of Law: Standard 620 A1 is met.

2. **Proportion:** The ratio of height to width of the front elevation should be related to existing or adjacent properties.

Finding of Facts: The ramp height and width is the minimum necessary to achieve the desired outcome and the available space. Its size is smaller than and keeping in appropriate ratio with the scale of the bridge.

Conclusions of Law: Standard 620 A2 is met.

3. **Roof Type and Pitch:** not applicable

B. Visual Appearance

1. **Materials and Texture:** Materials for new construction should be compatible to the types and textures of materials used within the District. Compatibility of materials and texture within the district or of the existing structures should be considered in the planning and design.

Finding of Facts: The use of metal for railings matching the existing bridge structure and wood matching the existing ramp walkway is in keeping with the design textures and materials of the existing bridge.

Conclusions of Law: Standard 620 B1 is met.

2. **Architectural Details:** For new construction, architectural details characteristic of the particular style proposed should be incorporated into the design. It is the intent to promote architecture of a traditional New England character.

Finding of Facts: The design of the bridge and the proposed ramp includes simple lines and detail characteristic of the traditional New England character of the area.

Conclusions of Law: Standard 620 B2 is met.

CONDITIONS:

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

1. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with Exhibits 15, 16 and 17 and the testimony provided. Any changes to the plans will require an administrative approval from the Zoning Administrator and/or a review by the Development Review Board, in conformance with the ordinance.
2. During and after construction the town shall inspect the structure to verify that the structure was built to the dimensions proposed and no development occurred within the floodway.
3. Ramp construction shall employ standard construction practices to ensure stormwater runoff is managed so as to prevent erosion and destabilization of the riverbanks during construction.
4. Ramp construction shall not permanently alter stormwater runoff or cause erosion.
5. The construction site shall be managed so as to ensure pedestrian and vehicular safety hazards through the construction process.
6. Ramp construction shall not take place before the hours of 7AM or after 8PM.
7. Ramp development shall meet all Flood Fringe Area requirements outlined by the Agency of Natural Resources and the requirements of the National Flood Insurance Program (NFIP), ensuring the development is “reasonably safe from flooding” and in no way jeopardizes the availability of NFIP insurance in the town of Wilmington.
8. The metal railing shall be powder-coated to match the green of the existing bridge.
9. The ramp walkway material shall be of the same wood type and coloration as the existing bridge walkway.
10. The bridge support will be 8 x 8 pressure treated wood, painted green to match the support structure of the bridge. In the event that the green is not found to be aesthetically appropriate by the applicant or their agent, the support structure may be painted a black or gray to match the bridge foundation, to essentially “make it disappear”. Such painting shall take place within 18 months of completion of the ramp system, allowing 12 months for the pressure treated lumber to cure and 6 months for painting.
11. Cross-walks to be installed shall terminate at the ingress/egress point of the bridge ramp.
12. Traffic calming methodologies (those currently in place or others as appropriate to achieve slowed traffic) shall be employed consistently and in perpetuity on route 9 west of the proposed development area to ensure a safe pedestrian environment.
13. The town will work with the state to ensure that state traffic signs do not present pedestrian safety or visibility issues.
14. Traffic and parking areas at 36 West Main Street will be differentiated from pedestrian areas to ensure pedestrian and vehicular safety.
15. Foliage between the river and Route 9 W will be trimmed to provide enhanced visibility of the bridge when approaching town from the West.
16. Reardons Crossing signage shall be replaced promptly at the conclusion of construction.

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 Seaman, Chair
Peter Wallace
Tim Hall
Fred Houston

OPPOSED:

None

ABSTAINING:

None

For the Board: Wendy Manners Seaman, 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.