

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: **Laughton Whitcomb, Agent for Margaret Libby**

Agent(s) Mailing Address: **PO Box 1032, Wilmington VT, 05363**

Owner/Applicant(s) Mailing Address: **19 Shafter Street, Wilmington, VT 05363**

Address of the subject property: **19 Beaver Street, Wilmington, VT 05363**

Tax Map #**21-22-023.000**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2013-112

Description of Case per Public Notice:

Application # 2013-112: Owner: Margaret Libby, Agent: Laughton Whitcomb. Application being made for Flood Hazard and Waiver review to allow construction of a porch of 24 sq. ft., and overhang of 13.5 sq. ft. and renovations to convert from a Single-Family Dwelling to a Two-Family Dwelling; Flood Hazard Area Regulation Sections 804, 811 & 820.B and the Zoning Ordinance Section 513; location: 19 Beaver Street.

Notice for a public hearing was published in the Valley News on: **1/3/2014**

Notice was posted in three public places on: **1/3/2014**

A copy of the notice was mailed to the applicant on: **1/3/2014**

A copy of the notice was mailed to the abutters on: **1/3/2014**

The public hearing was held on: **1/20/2013**

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: February 24, 2014

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 (two pages)
- A Plot Plan
- B Floor Plan (two pages)
- C Substantial Improvement Calculation
- D Abutters List
- E FEMA Flood Hazard Zone Map
- F Google Earth map with Flood Hazard Zone
- G detail of Flood Hazard map with structures hand drawn
- H List of Mitigation Measures

Margaret Libby and Laughton Whitcomb spoke for the Application.

DRB Member Gil Oxley recused himself before the hearing. He did not participate in the hearing or decision.

1. The subject property is in the Village District of the Town of Wilmington. The property is identified as Tax Map 21-22-023.000.
2. The house was built in early 1900's. There is an addition on the left-hand side of the original house that is also quite old. No date was given but the Applicant believes it predates zoning in Wilmington. The house sits on a 0.15 acre lot. Until a few months ago there was an enclosed six foot by thirty-six foot enclosed porch along the front of the house. The porch was in very bad shape and was removed. Presently, the front of the original house is about twelve feet from the road. The addition is set further back from the road than the main part of the house. (Exhibit A) The lot slopes away from the road toward Beaver Brook. The basement on the brook side is at ground level.
3. The building has been a single family dwelling but the Applicant is planning to make it into a two family dwelling.
4. The Applicant would like to add a three foot by eight foot awning over the front door.

This awning would be entirely within the footprint of the recently demolished enclosed porch. The Applicant would also like to add a four by six foot porch (24 square feet) in the corner of the main house and the addition. This porch would not be closer to either the side or front property lines than the existing structure. The Zoning Administrator stated that this proposal meets the waiver criteria that can be approved administratively.

5. The structure was flooded during Tropical Storm Irene in August of 2011. Although the actual structure was not damaged, there was extensive interior flood damage that needs repair. The structure has been flooded before but often the flooding has been limited to the basement area. The Applicant noted that the floodwaters come in and out of the basement quickly and she believes that the stone foundation helps in allowing the water to exit quickly.
6. Three flood maps were presented as exhibits (Exhibits E, F & G). Although at least some of the property is in Zone AE, it is hard to determine what zone the structure is in.
7. The market value of the structure is \$103,000. In 2013 the Applicant did approximately \$46,769 worth of repairs and improvements. The Applicant would like to continue to make repairs and improvements in 2014. The total for the 2014 repairs would be approximately \$46,050. (Exhibit C)
8. The Applicant is making many changes to mitigate future damage from flooding including but not limited to putting the furnace and other utilities on the second floor and by using water resistant materials. (Exhibit H)

II. The Board CONCLUDES:

The Board concludes that both the original structure and the addition were built before zoning in Wilmington and is a non-conforming structure.

Regarding the request to add an awning along the front of the house, the Board concludes that as long as the Applicant complies with Condition #2 cited below the Applicant does not need specific approval from this Board. Section 233.b.(i). of the new Wilmington Zoning Ordinance that became effective on December 11, 2013 states that "Any Nonconforming Structure which is intentionally destroyed or demolished may be reconstructed as a nonconformity." The proposed awning is entirely within the footprint of the recently demolished porch and, therefore, may be reconstructed.

Regarding the 24 square foot porch in the corner of the addition, the Board concludes that this meets the criteria for Administrative Approval for a Waiver. (Section 520.A.5) The Applicant should talk with the Zoning Administrator regarding getting that approval.

Regarding the Flood Hazard review, the Board CONCLUDES:

The Board concludes that none of the three flood maps are clear enough to conclude that the structure is entirely or partially outside the Flood Hazard Area (FHA). Since the Applicant testified that the structure has flooded multiple times, the Board concludes that it makes sense to review it as if it is in the FHA.

Therefore, subject property is considered by this Board to be in the Flood Hazard zone and requires a permit for Flood Hazard.

Vermont Municipal and Regional Planning and Development Act: section 4414(E)
“Within such a designated design review district, no structure may be erected, reconstructed, substantially altered, restored, moved, demolished, or changed in use or type of occupancy without approval of the plans by the appropriate municipal panel.”

The subject property requires Flood Hazard review to allow renovation and conversion to a Two-Family Dwelling. The Board concludes that the reconstruction of the structure and the mitigation measures will make the structure safer. It has been a single family dwelling for many decades and the change to a two family dwelling is not significant and is approved.

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 Board concludes that the Applicant’s cumulative rehabilitation and restoration costs in the year 2013 did not exceed 50% of the market value of the structure. The cost of the proposed work in 2014 does not exceed 50% of the market value of the structure. Therefore, the requirements for Cumulative Substantial Improvements do not apply. The Applicant is also making many changes to the structure and its interior that will mitigate damage from future flooding.

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:

III. CONDITIONS:

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

1. The total cost of any combination of repairs, reconstruction, rehabilitation, addition, alteration or other improvements of a structure shall not exceed \$51,500 in the 2014 calendar year.
2. The awning along the front of the building shall not be larger than the footprint of the recently demolished porch. The awning may be larger than the proposed three by eight feet as long as it is not larger than the previous footprint.

Thus, the Development Review Board *does approve* the application for **Flood Hazard review to allow renovation, the construction of the front entry awning and conversion to a Two-Family Dwelling in the Village District. The porch in the corner where the addition meets the house will require Administrative Waiver Approval.**

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

RECUSED:

Gil Oxley

For the Board: Polly Steel, Chairperson

Date: 1/24/2014

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.