

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, Windham Housing Trust and the Town of Wilmington**

Agent for Cliff Duncan, Town of Wilmington and Windham and Windsor Housing Trust:
Gretchen Havreluk

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

Windham Housing Trust, 68 Birge Street, Brattleboro, VT 05301-6462

Town of Wilmington, PO Box 217, Wilmington, VT 05363

Address of the subject property: **36 West Main Street & 29 Shafter Street, Wilmington, VT 05363**

Tax Map #**20-20-074.000 and 20-20-027.000.**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2014-003

Description of Case per Public Notice:

Application # 2014-003; owner: Owners; Windham Housing Trust, Cliff Duncan and the Town of Wilmington. Application being made for Historic Review District, Conditional Use and Flood Hazard reviews to allow construction of a pedestrian bridge over the Deerfield River; Flood Hazard Area Regulation Sections 804, 811 & 820 and the Zoning Ordinance Sections 270.B, 610 & 630.D.6; location: 29 Shafter Street and 36 West Main Street.

Notice for a public hearing was posted in three public places and was published in the Valley News on: **1/17/2014**

A copy of the notice was mailed to the applicant and to the abutters on: **1/17/2014**

The public hearing was held on: **2/3/2014 & 4/3/2014**

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: April 14, 2014 and the Approval expires on March 14, 2015.

In *addition* to the Applicants/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
Petition spokesperson, Lisa Sullivan
Josh Carvajal, Southern Vermont Floodplain Manager, ANR

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 (six pages)
 - A Authorization letter from Scott Murphy, Jan 17, 2014
 - B Authorization letter from Drew Richards, Jan 15, 2014
 - C Sketch Plan for Town of Wilmington by Merrill Mundell, April 10, 2013
 - D Footbridge Elevation by Bell Engineering, 3-25-2013, revised 4-19/2013, tow pages.
 - E Letter from Josh Carvajal, Southern Vermont Floodplain Manager, Jan 17, 2014. (two pages)
 - F Abutters List
 - G Two color photos of bridge
 - H Interested party petition (five pages)
 - I Authorization letter from Connie Snow, Feb 28, 2014
 - J Limit of Floodplain / Cross section of bridge
 - K Letter from Merrill Mundell to Josh Carvajal, Feb 27, 2014
 - L Cross Section – Wilmington Bridge by Merrill Mundell, Feb 26, 2014.
 - M Emails between Merrill Mundell and Josh Carvajal
 - N Authorization letter from Scott Murphy, Feb 28, 2014.
1. The subject properties are in the Village District of the Town of Wilmington. The properties are identified as Tax Maps 20-20-074.000 and 20-20-027.000.
 2. The Duncan property is also in the Historic Review District and the bridge abutments are in the Flood Hazard Area (SFHA AE Zone) The bridge itself arches over the Floodway.
 3. The subject properties are abutting the North Branch of the Deerfield River at the western edge of West Main and Shafter Streets. A small building owned by Cliff

Duncan, not used at this time, is at the 36 West Main location. On the south side of river is the “Round House” (actually Octagon) at 29 Shafter Street owned by the Windham and Windsor Housing Trust (WWHT). This building is at a higher elevation than the Duncan building and not affected by flooding.

4. The concrete abutments for the pedestrian bridge are located on the two properties. The bridge arches over the Deerfield River and connects the abutments.
5. The bridge, known as Reardon’s Bridge, was constructed in the spring of 2013 of metal with wood decking. It has a convex curved shape with metal railings and wood decking. The metal components are painted dark green. It is used by pedestrians and bicycles to access the Trail system that begins on the south side embankment or as simply a viewing spot of the river and the surroundings.
6. There is no permanently installed lighting on the bridge; however there is a street light on the Duncan property which sheds some light on the general area.
7. Agreements between The Town of Wilmington and both property owners provide permanent easements for pedestrian and non-motorized use with access across both properties. On June 4, 2013, after construction completed, The Town took possession of the bridge.
8. Motorized vehicles are prohibited.
9. The Base Flood Elevation at the bridge is 1,508 feet.
10. Application for a permit was submitted to the DRB in January, 2014. The hearing on February 3 was recessed until March 3 to allow for further information regarding the project to be sent by the Town to Josh Carvajal, CFM, Southern Vermont Flood Plain Manager, Agency of Natural Resources.
11. At the hearing on March before the DRB, Mr. Carvajal stated that while the abutments were in The Flood Hazard Area (AE Zone), a portion of the bridge construction is below the Base Flood Elevation (BFE) and, therefore, in the Floodway. He also stated that he did not have sufficient information to complete his review. Exhibit M outlines his requirements that need to be submitted by the Applicant. Depending on the additional information, Mr. Carvajal stated that there are four possible options:
 - a. There is no impact (no rise in upstream flood height) on the Base Flood Elevation (BFE).
 - b. There is a rise in upstream flood height and the bridge would need to be raised above BFE.
 - c. There is a rise in upstream flood height and mitigation measures would need to be taken.
 - d. There is a rise in upstream flood height but the Applicants want to request a Conditional Letter of Map Revision from FEMA.

12. An application for a Conditional Use in the building on the Duncan property has been submitted and is scheduled to be heard by this Board on March 17, 2014.
13. Lisa Sullivan, spokesperson for the Interested Party petitioners, spoke in favor of the application.

II. The Board CONCLUDES:

1. The Town of Wilmington did not take ownership of the Bridge until June 4, 2013, after the completion of the project. An application should have been submitted at the time of initial development of the project. At that time, it was not a municipal project as there was no ownership by the Town of the bridge itself or the properties on which the abutments are located.
2. In accordance with the Zoning Bylaw, Section 270: District Purposes and Descriptions, Section B. Village District, Conditional Use: the Board concludes that pedestrian bridge meets the definition of an Outdoor Recreational Facility.

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

- A. Will the proposed Conditional Use have an undue adverse effect on the capacity of existing or planned community facilities?**
No. There are no water or sewer connections to be installed and no other facilities are impacted.
- B. Will the proposed Conditional Use have an undue adverse effect on traffic on roads and highways in the vicinity?**
No. Walking will be encouraged and there is adequate parking in the Municipal lot a short distance from the bridge. The bridge may even serve to lessen local traffic.
- C. Will the proposed Conditional Use have an undue adverse effect on the character of the area, as defined by the purpose or purposes of the zoning district within which the project is located? The purpose of the Village District is:**

***Purpose:** To retain the character of the existing village, provide for future residential and commercial development through historically appropriate structures and business types at appropriate densities, and promote residential and tourist quality of life by preserving and developing a clustered village reflecting a visibly vibrant and energized community. The village district will encourage development which creates a visible sense of excitement and activity, drawing people to stop and participate. Examples of desired*

activities include village stroll, street fairs, retail markets, art display, outdoor dining, street-front dining, public seating areas, performance arts venues, street performance and clustered communal areas. Building structures will be reflective of the historic nature of the town. Outdoor spaces will reflect the rural and bucolic nature of the area. The Historic Review District, as defined in Article VI, is included in this district. Some of the parcels in the village are also subject to the Historic Review District Guidelines in Article VI.

No. In fact, the bridge will serve to enhance the visual character of the Village to attract visitors and encourage tourism.

D. Will the proposed Conditional Use comply with specifically stated policies and standards of the Town Plan?

Yes. For all of the reasons stated above in the Purpose of the Village District.

E. Will the proposed Conditional Use comply with other sections of the Zoning Bylaw?

See below. In addition to Conditional Use review, this application requires approvals based on Historic Review District and Flood Hazard Regulation criteria.

III. CONDITIONS for Conditional Use:

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

1. No motorized vehicles shall be allowed.
2. Parking on the Duncan property (North side of the bridge) will be delineated to ensure safe pedestrian access to the bridge. Parking shall not be allowed in the delineated area.
3. The permanent easements for access shall remain in effect.
4. Lighting in the vicinity will not disturb the rural and bucolic nature of the adjacent area. It needs to be low intensity and/or down-shielded.

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

Under Section 610 of Article VI (Historic Review District Site Review Criteria) the Board concludes that the bridge design relates to and is consistent with, the Criteria as follows:

1. The bridge and the WWHT property are not in the Historic Review District. Only

the bridge abutment and the access on the Duncan property are in the district. However, the bridge relates to the scale in the neighborhood and preserves the natural environment with attention to the visual landscape.

2. It provides efficient pedestrian circulation with delineating parking and accessibility for the disabled.
3. The part that is in the Historic Review District has minimal impact and the DRB concludes it meets any applicable criteria for the District.
4. Under Section 630, D-6 (Permit Required through DRB approval) the Board concludes that the significant change to the site will not adversely affect the area.

V. CONDITIONS for Historic Review District:

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

1. Parking on the Duncan property will be delineated to ensure safe pedestrian access to the bridge.

VI. Regarding the Flood Hazard Regulations, the Board CONCLUDES:

The subject properties are in the SFHA (AE zone) and require Flood Hazard review. The bridge is over and partially within the Floodway and also requires Flood Hazard Review.

The DRB is unwilling to grant permanent approval for this project until Josh Carvajal has completed his review. In order to do that, he requires additional information from the Applicants. The Board also acknowledges Cliff Duncan's need to have his Conditional Use application to be heard. The Board is granting a temporary approval for up to one year so that the Duncan hearing may move forward.

FLOOD HAZARD

Article VIII

SECTION 820: DEVELOPMENT STANDARDS

Before a permit may be granted, the Development Review Board shall require the following standards:

A. Floodway Areas

- 1. Development within the regulatory floodway, as determined by Section 804, is prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice by a registered professional engineer certifying that the proposed*

development will result in no increase in flood levels during the occurrence of the base flood.

VII. CONDITIONS for Flood Hazard approval:

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

1. If the Southern Vermont Floodplain Manager determines that there is no rise of the upstream flood height and no impact on the BFE, the temporary Approval shall become permanent upon the receipt of a written verification from Mr. Carvajal to the Zoning Administrator
2. If the review by Southern Vermont Floodplain Manager finds that there is a rise in the BFE and the bridge needs to be raised above the BFE, then the compliance with that requirement shall be completed within one year of issuance of this Decision or the Approval shall be null and void. If the work is completed within the year, the Approval shall be considered permanent upon written verification from the Southern Vermont Floodplain Manager to the Zoning Administrator.
3. If other means of mitigation are deemed necessary by Southern Vermont Floodplain Manager they shall be completed within one year of issuance of this Decision or the Approval shall be null and void. If the work is completed within the year, the Approval shall be considered permanent upon written verification from the Southern Vermont Floodplain Manager to the Zoning Administrator.
4. If any of the outcomes described above are not feasible, a new application shall be submitted to the DRB so that additional information and testimony can be received. If a new application is necessary, it shall be received prior to the one year anniversary of the issuance of this Decision.

Thus, the Development Review Board does **approve** the application for **Conditional Use and HRD review to allow construction of a Pedestrian Bridge in the Village District.**

Thus, the Development Review Board does **approve** on a temporary basis the application for **Flood Hazard review to allow a Pedestrian Bridge in the Village District to remain until further information is received.**

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:

Sherry Brissette
Sheila Osler
Gil Oxley
Nicki (Polly) Steel

OPPOSED:
None

For the Board: Polly Steel, Chairperson

Date: 3/14/2014

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.