

**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: # **020-20-074.000**

A copy of the request is filed in the office of the Board and is referred to as: **#2019-009**

Description of Case per Public Notice:

Application # **2019-009** : Owner(s): **Clifford Duncan**

Application is being made for a conditional use Review to construct a pedestrian ramp to access the Reardon Bridge. Village (Historic Review) zoning district. Section 610, 710, 720, 721, 722, 723 & 730. Location 36 West Main Street.

Notice for a public hearing was published in the Valley News on: **May 16, 2019**

Notice was posted in three public places on: **May 16, 2019**

A copy of the notice was mailed to the applicant on: **May 17, 2019**

A copy of the notice was mailed to the abutters on: **May 17, 2017**

Hearing was held on: June 3, 2019

Appeal period for this Case expires on: July 14, 2019

Approval expires on: June 14, 2021

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

Gretchen Havreduk (on call)

Clifford Duncan

Mark Westa from Stevens & Associates

EXHIBITS

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

1. Application

2. Pictures of existing bridge, ramp & gravel lot
3. Bridge design picture
4. Existing conditions & site prep plan from Stevens & Associates
5. Layout plan from Stevens & Associates
6. Grading, drainage & plan from Stevens & Associates
7. Grading, drainage & erosion control plan from Stevens & Associates
8. Letter from Scott Tucker, Town Manager, about ADA Access
9. Selectboard minutes from 1/15/19 approving project of Bridge ramp
10. Picture of proposed railing
11. Picture of proposed interior railing

SYNOPSIS

The application proposes removal of existing stairs to access Reardon Bridge & construction of 8' pedestrian ramp for access.

APPLICABLE DISTRICT

Finding of Fact: Subject property is in the Historic Design Review District within the village district. It is identified as Tax Map: # **020-20-074.000**

Conclusions of Law: The proposed development lies in the Historic Design Review District within the village District.

USES

Finding of Facts: The bridge ramp is a Recreation Facility, Outdoor as defined in the Zoning Ordinance. This Use is a Conditional Use in the Historic Design Review District within the Village District of the town.

Conclusions of Law: The Use Recreation Facility, Outdoor is an allowed Conditional Use in this district.

Article V Design Review Districts

Section 522: Goals of the Historic Design Review District

The Site Plan and Design Goals of the Wilmington Historic Design Review District are as follows:

- A. To preserve the historic and cultural heritage of the historic downtown.
- B. To support maintenance, change and preservation of building and property in accordance with the design guidelines of this zoning ordinance and consistent with recognized and accepted standards for historic preservation projects.
- C. To promote the Use of buildings and property in a manner that benefits the community and individual property owners, while preserving those features that have architectural or historic merit.
- D. To attract visitors and encourage tourism by enhancing the visual character as a New England village.
- E. To encourage maintenance and preservation of building and property and changes to support a visually attractive village for the pleasure of residents and visitors.
- F. To encourage and support economic growth and prosperity within the community while maintaining the New England Character.
- G. To encourage public and private investments that may result in a positive contribution to visual harmony and economic vitality, and protect these assets for future generations.

The goals of this District shall be considered by the Development Review Board when considering proposed land development for this District.

Findings of Fact: The proposal to build the Reardon Pedestrian bridge ramp supports the goal of Historic Design Review District. The bridge is part of a trail system that is popular with both tourists and residents alike. The bridge is an attractive and aesthetically contributing feature of the historic downtown.

Conclusion of Law: The proposal as presented meets the goals of the Historic Design Review District.

Article VI Flood Hazard District

Section 602 (A-C): Lands to Which These Regulations Apply

These regulations apply to development in all areas of the town identified as special flood hazard in and on the most current flood insurance studies and maps published by the Dept. of Homeland Security, FEMA, and National Flood Insurance Program (NFIP), as provided by the ANR pursuant to 10 V.S.A. section 753. The base flood elevations and floodway limits (zones A1 – A30, AE and AH) provided by the NFIP shall be used to administer provisions of the regulation. If none is provided by the NFIP then information available from the state or federal agencies or other sources shall be obtained and reasonably utilized.

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, a ramp, to access Reardon’s Bridge. The ramp structures, gravel fill with rock faced concrete retaining walls and railings, will increase the BFE in the Flood Hazard Area. In addition, the ramp will be importing fill from outside the Flood Hazard Area. Per testimony of Matt Testa, the surface will be asphalt.

Conclusions of Law: The proposed access is not a Permitted Use under Flood Hazard Regulations. It must be reviewed as a Conditional Use.

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 Section 610 A(2)

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.”

Rock faced concrete retaining walls filled with gravel, railings and bollards to be added to Flood Hazard area will increase BFE level. Per testimony of Matt Testa, the surface will be asphalt.

Material to be excavated on the opposite side of Reardon Bridge will neutralize the BFE effect of adding material to the flood hazard zone. ANR has provided guidance & verbal approval of this “Compensatory Storage” approach to flood plain management. (Testimony, Craig Ohlson). Approximate area of cut is 2,450 square feet with a depth of 10 inches.

The proposed bridge ramp structure has been found by the Agency of Natural Resources (ANR) to be appropriate as a flood resistant approach that will minimize flood damage consistent with the requirements of this standard.

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 Design Review District has a zero setback. Setback requirements are met.

Conclusions of Law: Dimensional Requirements are met.

Article VII Standards

Section 710: Use Performance Standards

A. Vibration: No continuous, permanent, ongoing, or frequent vibration that is discernible at the property line.

Findings of Fact: There will be no continuous, permanent, ongoing, or frequent vibration on the premises. No machinery is to be utilized such as to create such vibration. (Testimony of the Applicant)

Conclusions of Law: Standard 710 A is met.

B. Noise: Continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation must not exist at the property line. Recurring periodic noise in excess of that of a normal lawn mower at the property line is allowed provided it does not occur between the hours of 9PM and 7AM and does not significantly detract from or diminish other property’s allowed use or land development.

Finding of Facts: Use of the bridge is the occasional walker and hikers. Noise is generally normal conversation. There will be no continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation at the property line.

Conclusions of Law: Standard 710 B is met.

C. Air Emissions for Commercial Operations: There shall be no emission of dust, ash, smoke or other particulate matter that can:

1. Cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity.
2. Contaminate the property or beyond the property boundaries.
3. Have solid or liquid particulates in concentrations exceeding state standards.
4. Cause odorous matter in quantities as to be offensive

Findings of Fact: There will be no air emissions.

Conclusions of Law: This condition is satisfied.

D. Injurious or Noxious Practices: No operations or use shall create electromagnetic, liquid or solid refuse or waste, heat, cold, dampness, explosive, fire, glare, or other hazard which will cause injury or damage to human or animal health, vegetation, or property.

Findings of Fact: No injurious or noxious practices, as defined, will be conducted on the premises. (Testimony of the Applicant)

Conclusions of Law: Standard 710 D is met.

Section 721: General Standards

The proposed use shall protect against adverse effect on:

A: The Capacity of Existing or Planned Community, Municipal or Educational Facilities

Findings of Fact: There will be no employees. Maintenance of the ramp will be completed by Town.

Conclusions of Law: No additional stress will be placed on the Town facilities or educational system.

B. Traffic on Roads and Highways

Findings of Fact: There is no parking on site.

Conclusions of Law: Standard 721 B is met.

C: Bylaws and Ordinances in Effect

Findings of Fact: Proposed development has been shown to be conforming to all bylaws and ordinances in effect at the time of this decision including the Zoning Ordinance and the Town Plan.

Conclusions of Law: This application is in conformity with all bylaws and ordinances. Standard 721 C is met.

D. Utilization of Renewable Energy

Findings of Fact: Not applicable

Conclusions of Law: Standard 721 D is met.

E. Air Quality

Findings of Fact: See Section 710 C above

Conclusion of Law: Standard 721 E is met.

F. Character of the Area

Findings of Fact: The purpose of the Village District is:

“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.

Development and reconstruction shall reflect the character and ambiance of the historic village.

Businesses shall promote economic stability and sustainability of the town through contributing substantially to the economic viability of the community. Businesses shall provide a substantially unique retail and service experience to attract visitors and meet the needs of residents. Businesses shall reflect the special character and ambiance of the town. Businesses shall be small in scale consistent with the clustered downtown of the historic village.”

Conclusions of Law: The proposed bridge ramp will improve bridge access for visitors and residents, enhancing this popular downtown feature. The bridge provides for the needs of residents and visitors, enhancing economic viability and promoting sustainability of the town. The proposed development is consistent with the defined purpose of the Village District and is consistent with the historic nature of the Village. Standard 721 F is met.

Section 722: Conditional Use - Preserving the Character of the Town

A. Preserving the Town’s Character: The ramp will be designed to maintain the New England charm & character.

B. Economic Development Contributing to the Character of the Town: The ramp will provide more accessibility for use of Reardon Bridge for hikers, bicyclists & other recreational uses.

C. Development Consistent with the Rural, Agricultural, and Historic Nature of the Town: Proposed ramp is consistent with nature of town.

D. Formula Businesses – Not applicable, not a formula business as defined

E. Maximum Square Footage of Retail (2000 square feet) – Not applicable

F. Building Scale Conformity – Not applicable

G. Utility Placement – Not applicable

Findings of Fact: The proposed use of the pedestrian ramp meets all standards.

Conclusions of Law: The proposed use preserves the character of the town consistent with the rural, agricultural, historic nature of the town as a family oriented tourist destination and a residential community. Standard 722 A, B, and C are met. Section 722 D, E, F and G are not applicable.

Section 723: Conditional Use - Preserving the Character of the Town: Historic Preservation (required in the Historic Design Review District (HDRD), recommended in all other districts)

A. Historic Structures: No development shall compromise a certified Structure’s historic status.

Findings of Fact: This application is not involving an historic structure.

Conclusions of Law: Not applicable

B. Historic Preservation, Rehabilitation and Restoration. Historic features and historic Structures shall, to the extent reasonable and possible, be preserved, rehabilitated, or restored.

Findings of Fact: Not applicable

Conclusions of Law: This condition is satisfied.

Section 730: Conditional Use – Specific Standards

A. Lighting and Glare: Shall be shielded and downcast. Glare and reflection is prohibited if it is a unreasonable nuisance to other property owners or tenants, does not contribute to aesthetics, scenic value or character of the area, or could impair vision of pedestrians or drivers. In HDRD and Village District exterior lighting must be consistent with historic character of the commercial area of the village

Findings of Fact: No lighting on the ramp

Conclusions of Law: Standard 730 A is met.

B . Safety: Shall minimize physical hazards where there are potential safety hazards.

Findings of Fact: Safety bollards will be placed at both entry points on the ramp. Bollard placement will ensure that traffic from route 100 and the adjacent parking area to the ramp can not accidentally cross into pedestrian areas, jeopardizing pedestrian safety.

Conclusions of Law: The decision will be conditioned on bollard placement to protect pedestrian safety. Standard 730 B is met

C. Traffic and Pedestrian Safety: Pedestrian walkways to ensure safe and efficient navigation by foot or bicycle. Special consideration shall be made for children’s safety. Traffic patterns will be review for safety, ease of flow and efficiency.

Findings of Fact: Access to the premises is from the public sidewalk on the easterly side of West Main Street. See B above for additional information on traffic and pedestrian safety.

Conclusions of Law: Standard 731 C is met.

D. Commercial Parking and Loading: Commercial parking and loading areas in all districts shall:

1. Provide off-street parking (except in the Historic Design Review District)

2. Parking spaces shall be 10 x 18 (smaller allowed only if need for added spaces outweighs the risk and public inconvenience of smaller spaces). Special consideration shall be given to safety, pedestrian and disabled persons concerns when smaller spaces are allowed.

3. Minimum number of spaces: One (1) parking space for each 200 sq ft. retail.

4. Drive-up Windows: no waiting lines in public ROW

5. Minimize visual impact of parking/loading areas

6. Buffer parking areas if needed for safety or aesthetics

7. Public Road Access: minimize traffic interruption, provide for auto and pedestrian safety

8. Rainwater, Snow, and Ice Removal/Storage: Plan for snow/ice removal, runoff, safety.

9. Safety: Minimize physical hazards, provide safe pedestrian and vehicular movement with un-obscured views, especially visibility at intersections, pedestrian safety, convenience, emergency access.

10. Neighboring properties: integrate circulation and parking with neighboring properties. Work to maximize for efficiency, safety, and attractive solutions.

Finding of Facts: The property is in the Village Historic Design Review District. There is no requirement for on-site parking in this district.

Conclusions of Law: Standard 732 D is not applicable.

E. Road Development: New roads, public and private, shall conform to the town’s Highway Ordinance.

Findings of Fact: The proposed use does not involve road development.

Conclusions of Law: Section 730 E is not applicable

F. Landscaping, Screening and Development: Shall “preserve the rural and agricultural character and ambiance of the community”. Natural features characteristic of the town’s rural and agricultural nature shall be preserved. Landscaping and Screening shall be used to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

Findings of Fact: The center area of the ramp will be tapered with topsoil and planted with flowers and other aesthetic material, as defined by the Beautification Committee.

Conclusions of Law: This condition is satisfied

G. Land and Water Management: Protect properties, transportation systems, and public safety by

a. Safe and appropriate water management including water supply/availability, stormwater retention/absorption, and impervious surface/runoff management.

b. prevent and control against water pollution

c. make provision for management of erosion, preservation of rivers & streams, river/stream bank management, wetland protection, waterway and channels management, and agricultural land protection,

Findings of Fact: A concrete retaining wall will prevent ramp erosion into the waterway. Storm water will be directed towards the center of the ramp & piped to existing culvert below the ramp.
Conclusions of Law: Standard 730 G is met

H Wastewater and Potable Water: A permit may be issued upon receipt of evidence there is a wastewater and potable water permit. If none is received with a submitted application, the Permit will be conditioned on receipt of a wastewater and potable water permit at which time a final Permit will be issued. DRB shall instruct the applicant on their responsibility to obtain state and federal permits and may condition their decision on obtaining such permits.

Findings of Fact: Not applicable
Conclusions of Law: Standard 730 H is met.

I. Natural Resources and Features: Existing vegetation, native species, native trees, scenic views, river access and other natural features shall be preserved to the extent possible and to the extent that they will enhance and promote the natural assets of the town. Clearing of land to create pastureland and scenic spaces/vistas is allowed provided it does not have an unreasonable impact on natural resources. Development shall blend with the topography, vegetation, and natural land features. It shall not have an undue adverse impact on natural features, natural resources or renewable energy. This includes no adverse impact on forested lands, streams and stream banks, steep slopes, wetlands, watersheds, floodplains, soil unsuitable for development, impervious surfaces essential to stormwater detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural or manmade features, and renewable energy sources.

Findings of Fact: The ramp will be consisting of materials with the natural resources of the river. The retaining wall will be rock faced and filled with gravel. Per testimony of Matt Testa, the surface will be asphalt. The ramp will not adversely impact the natural resources of the area. It will blend with and enhance natural resources.

Conclusions of Law: Not applicable

J. Wildlife Protection: No adverse impact on wildlife habitats or corridors.

Findings of Fact: 7 North Main is in the congested downtown area and is not identified on the town Natural Resources Map, Nov 2016 as having any rare or uncommon animals; a significant natural community; a deer wintering area or wildlife habitat.

Conclusions of Law: The proposed Use will not have any adverse impact on wildlife habitats or corridor. Standard 730 J is met.

K. Shoreland Protection: Compliance with Shoreland Protection Act if development is within 250 feet of a body of water greater than 10 acres.

Findings of Fact: This waterway is not a Shoreland to a body of water of greater than 10 acres. The Shoreland of Harriman Reservoir commences further down the river.

Conclusions of Law: Standard 730 K is not applicable.

L. Flood Hazard Protection: Development must comply with the provisions of Article VI Flood Hazard District.

Findings of Fact: Property is within flood district.
Conclusions of Law: See responses under Article VI above.

M. Energy Resources: Commercial Development shall comply with the Vermont Commercial Building Energy Standards

Findings of Fact: Not Applicable.

Conclusions of Law: Section 730 M is met

N. Technical Review Costs: Applicant may be required to pay reasonable costs of technical review.

Findings of Fact: There are no technical review costs.

Conclusions of Law: Section 730 N is not applicable.

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 5,6, 7 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. Applicant to provide letter of approval from ANR
8. The metal railing shall be powder-coated to match the green of the existing bridge.
9. The ramp walkway material shall be asphalt.
10. The applicant will work with the state to provide traffic calming methodologies (those currently in place or others as appropriate to achieve slowed traffic) to ensure pedestrian safety against oncoming traffic consistently and in perpetuity on route 9 west of the proposed development area.
11. The town will work with the state to ensure that state traffic signs do not block visibility of pedestrians.
12. Traffic and parking areas at 36 West Main Street will be differentiated from pedestrian areas by the placement of bollards to ensure pedestrian and vehicular safety. Vehicles will be barred from accidentally entering pedestrian areas through appropriate bollard placement.
13. Foliage between the river and Route 9 W will be trimmed to provide enhanced visibility of pedestrians and the bridge when approaching town from the West.
14. 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
Cheryl LaFlamme
Fred Houston
Paul Lockyear
Charles Foster

OPPOSED:

None

ABSTAINING:

None

For the Board: Cheryl Laflamme, Vice Chairperson

Date: June 14, 2019

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.