

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: **Town of Wilmington**

Agent(s) Mailing Address: **Linesync Architecture, 14 Castle Hill, Wilmington, VT 05363**

Owner/Applicant(s) Mailing Address: **P.O. Box 217, Wilmington, VT 05363**

Address of the subject property: **14 West Main Street, Wilmington, VT 05363**

Tax Map #**020-20-085.000**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2013-065

Description of Case per Public Notice:

Application # 2013-065; owner: Town of Wilmington. Application being made for Waiver or Variance request and Flood Hazard Area review to allow construction of an elevated deck for HVAC equipment, a replacement handicap ramp, insulation and interior renovations; Flood Hazard Area Regulation Sections 804, 811 & 820.B and the Zoning Ordinance Section 512 & 513; location: 14 West Main Street.

Notice for a public hearing was published in the Valley News on: **8/2/2013**

Notice was posted in three public places on: **8/2/2013**

A copy of the notice was mailed to the applicant on: **8/2/2013**

A copy of the notice was mailed to the abutters on: **8/2/2013**

The public hearing was held on: **8/19/2013**

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: September 25, 2013

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.)

Joseph Cincotta, Agent for Applicant
Scott Murphy, Wilmington Town Manager
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 (six pages)
 - A exterior photos, three sheets
 - B Tax Map
 - C R Value of proposed insulation
 - D Survey titled "South Side of West Main Street" by Guy Hawkins, 1961-1962.
 - E Letter from Robert Stevens, February 14, 2012. (three pages)
 - F Case Summary
 - G Abutters List
 - H Architect's Project Information (nine pages)
1. The subject property is in the Commercial District, the Flood Hazard Area and the Historic Review District of the Town of Wilmington. The property is identified as Tax Map 020-20-040.000. The historic building on the property is known as Memorial Hall and is owned by the Town of Wilmington. Applicant's application indicates that it was acquired by the Town in 1921 and it is a non-conforming structure.
 2. The building sits on a very small lot with a zero setback on the westerly (Incurable Romantic building) side, an approximately two to four feet setback on the easterly (Crafts Inn) side and a ten foot setback on the rear or south side.
 3. Applicant is seeking to construct a 10 foot by 30 foot raised deck at the rear (south side) of the building. New HVAC equipment is to be placed on the deck in order to air condition and heat the building. The building's rear setback is 10 feet, and the proposed deck will extend to the rear property line (It should be noted that apparently the last property survey was performed in 1961-1962. Exhibit D). Applicant is requesting that the Board grant a Variance and/or a Waiver so as to allow a zero rear setback.

4. Applicant testified that according to the manufacturer the entire 300 square feet of the deck is the minimum size needed to insure the safe operation of the HVAC equipment. The manufacturer of the equipment requires appropriate clearance around the machinery in order that it be maintained and repaired. The equipment is quite heavy (several tons) and therefore the raised deck will be made of steel and will be supported by metal posts and railings. The posts will be set in concrete and the deck will be approximately 15 feet high. There will be a railing around the edge of the platform for the safety of anyone working on the units.
5. There is presently a handicap ramp on the east side of the building. Applicant is proposing to replace the ramp with a new one which will have a slightly lower pitch. The new ramp will be constructed of wood, with metal handrails inside the wooden side safety rails, and vertical posts. The ramp will not enlarge the footprint of the existing ramp. Also, expanded foam insulation will be placed inside the building.
6. The Applicant has requested a Waiver (and a Variance) in order for the deck to be constructed within the rear setback, and gave testimony concerning the Town's Waiver criteria. However, for reasons to be discussed below, the Board finds that a Waiver (or a Variance) will not be needed.
7. After Tropical Storm Irene, work was done on the building to restore it. This was permitted under Zoning Case #2011-093.
8. In the spring of 2013 work was done on the bathrooms for a cost of \$26,000. Estimates for materials and labor for the improvements under this application total \$100,000 for a total improvement in 2013 of \$126,000. The Zoning Administrator gave the market value of the Hall of \$360,000.

II. The Board CONCLUDES:

The subject property is in both the Commercial District and the Historic Review District and an encroachment of the rear setback as the Applicant proposes would usually necessitate a Variance and/or a Waiver. Testimony was given that the proposed deck, although it will be attached to the building, is not really an extension of the building as it is not meant for human use, but only a "mechanical accoutrement". This distinguishes it from a deck added to a building which would be used by patrons and customers. The Board considered this testimony and analogized that a Variance or Waiver would not be needed if the HVAC equipment was to be placed on the ground within the rear setback, something that could not be done here due to flood hazard restrictions. The Board therefore concludes that this proposed deck *does* meet the criteria of the Wilmington Zoning Ordinance, that a Variance or Waiver is not needed, and that the proposed deck is approved.

The Board also concludes that the new design of the ramp is consistent with the Historic Review District. The platform in the rear of the building will not be visible from the

street and will therefore not impact the historic nature of Memorial Hall.

The Board also approves the reconstruction of the handicap ramp, the installation of insulation, and interior renovations.

III. CONDITIONS for the Proposed Deck request:

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

1. The proposed raised deck may be constructed up to, but may not extend beyond, the rear property line. It shall not exceed 10 feet by 30 feet and shall be located as shown in Exhibit H.
2. The proposed replacement handicap ramp shall be constructed of wood with metal railings and wooden safety rails. The footprint of the ramp shall not be increased except to lessen the pitch of the ramp.

IV. Regarding the Flood Hazard review, the Board CONCLUDES:

The subject property is in the Flood Hazard Zone and a Substantial Improvement Calculation is required. The fifth page of the Application sets forth that the building improvements in the calendar year total \$50,000 for materials and \$50,000 for labor, a total of \$100,000. However, testimony was received that these figures do not include the \$26,000 renovation of a bathroom. This brings the total to \$126,000. As the market value of the structure is estimated at \$360,000, the total substantial improvements are under the 50% threshold.

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, as set forth below:

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 term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specification which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

V. CONDITIONS for Flood Hazard approval:

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

1. Cumulative improvements shall not exceed 50% of the market value of \$360,000 in any calendar year.
2. The supporting posts of the proposed deck shall be designed and anchored to prevent flotation, collapse or lateral movement of the structure during an occurrence of a base flood. They shall be constructed of materials resistant to flood damage.

Thus, the Development Review Board *does approve* the application for **the construction of a 10 foot by 30 foot raised deck for HVAC equipment, the reconstruction of a handicap ramp and the installation of insulation and interior renovations in the Commercial District and Historic Review District.**

Thus, the Development Review Board *does approve* the application for **Cumulative Substantial Improvements calculations as part of a Flood Hazard Review in the Commercial District and Historic Review District.**

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.

IN FAVOR of granting the APPROVAL FOR the above referenced application, with whatever restrictions, requirements, limitations or specifications are contained herein.

Andrew Schindel
Nicki (Polly) Steel
Gil Oxley
Sheila Osler
Frank Sprague

OPPOSED:

None

For the Board: Polly Steel, Chairperson

Date: 8/26/2013

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.