

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**  
Owner/Applicant(s) Mailing Address: **P.O. Box 217, Wilmington, Vermont 05363**  
Address of the subject property: **Look Road**

Tax Map: #

A copy of the request is filed in the office of the Board and is referred to as: **#2016- 093**

**Description of Case per Public Notice:**

**Application # 2016-093:** Owner: Town of Wilmington. Agent: Scott Murphy. Application is being made for a Conditional Use review to construct a 16' wide by 60' long bridge over Cold Brook. Residential zoning district & Flood Hazard Review. Sections 603, 710 & 721: Look Road

Notice for a public hearing was published in the Valley News on: **November 23, 2016**

Notice was posted in three public places on: **November 23, 2016**

A copy of the notice was mailed to the applicant on: **November 23, 2016**

A copy of the notice was mailed to the abutters on: **November 23, 2016**

A public hearing were held on December 12, 2016  
There was no Site Visit.

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 Environmental Court.

**Appeal period for this Case expires on: January 29, 2016**

**Approval expires on: December 29, 2018**

In *addition* to the Applicant/Agent the following persons, the following presented testimony on behalf of the Applicant or an Interested Person:

1. Eric Potter - Abutter  
21 Look Road  
Wilmington, VT 05363

### **EXHIBITS**

The following Exhibits were placed in evidence by the Applicant or Interested Person:

1. Application including Abutters List
2. A set of plans entitled “Bridge Replacement, Wilmington, Vermont, Look Road (TH6), Over Cold Brook (BR56)” by Holden Engineering & Surveying, Enc. dated 9/16/2016 being Sheets 1,2, 4 (dated 10/13/2016), 5, 7, 9, 18 and 20.
3. Copies of a series of emails to and from from Joshua Carvajal of the Vermont Department of Environmental Conservation, Watershed Management Division to Holden Engineering & Surveying, Inc. dated December 1 and 8 2016
4. Authorization to Conduct Stream Alteration Activities from the Vermont Department of Environmental Conservation, Watershed Management Division dated December 12, 2016.
5. Letter from Frank J. DelGiudice, Chief, Permits & Enforcement Branch, Regulatory Division Department of the Army, US Army Corps of Engineers dated October 25, 2016.
6. Portion of FEMA Flood Insurance Rate Map showing project location.
7. Letter from Pamela M. Thurber, P.E., Bridge Inspection and Budget Program Manage (sic), State of Vermont, Agency of Transportation – Highway Division, Bureau of Asset Management and Performance – Bridge Inspection.
- 8 Erosion control plan to be filed.

### **SYNOPSIS**

The applicant proposes to construct a 16 foot by 60 foot bridge, to include abutments, over the Cold Brook on Look Road to replace an existing bridge. A temporary bridge will be constructed upstream of the permanent bridge to be utilized during construction and removed after construction is completed.

### **APPLICABLE DISTRICT**

**Finding of Fact:** The proposed project is not located on a tax parcel but is shown to be between elevations 1642 and 1645 along the Cold Brook as shown on Exhibit 6. Testimony of Scott Murphy.

**Conclusions of Law:** The proposed development lies in the Residential District and will be reviewed under Article IV Section 450C.

### **USES**

**Findings of Fact:** The proposed development is to replace a pre-existing municipal bridge.

**Conclusions of Law:** The use pre-exists

## **DIMENSIONAL REQUIREMENTS OF THE DISTRICT**

**Findings of Fact:** The proposed development is to replace a pre-existing municipal bridge with a similar structure, 16 feet wide and 60 feet long.

**Conclusions of Law:** Not applicable

## **ARTICLE VII FLOOD HAZARD DISTRICT**

### **Section 602: Lands to which these regulations apply**

- A. These regulations apply for development in all areas of the Town of Wilmington identified as areas of special flood hazard in and on the most current flood insurance studies and maps published by the Dept. of Homeland Security (DHS), FEMA. National Flood Insurance Program, as provided by the Agency of Natural Resources pursuant to 10 VSA 753
- B. The base flood elevations and floodway limits (zones A1-A30, AE and AH) provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer the provisions of these regulations.

**Findings of Fact:** The abutments and the approaches to the proposed bridge are within the flood hazard area. Exhibits 1, 2 and 6.

**Conclusions of Law:** The proposal falls under the Flood Hazard regulations of these By Laws.

### **Section 605: Permitted Uses**

The following open space uses shall be permitted within flood hazard areas to the extent that they are not prohibited by any other ordinance or regulation and provided that they do not require the erection of structures, storage of materials and equipment, 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 the base flood or increase off-site damage potential.

- A. Agricultural uses, such as general farming, pasture, orchard, grazing, outdoor plant nurseries, truck farming and forestry.
- B. Recreational uses, such as parks, campsites, picnic grounds, golf courses and boat launching sites.
- C. Residential uses, such as lawns, gardens, unpaved areas and play areas.

**Findings of Fact:** The proposal is a bridge within a flood hazard area. Exhibits 1 and 6

**Conclusions of Law:** The proposal is not a permitted use and must be permitted under the Conditional Use provisions of Sections 710, 721 and 730 of these regulations.

### **Section 610: 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 602, 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.

2. Junkyards and storage facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, are prohibited within the floodway.

**Findings of Fact:** The development is within the floodway. Exhibits 1 and 6. A registered engineer's certificate as required by Section 610 A 1 was not tendered at the hearing but will be forthcoming. Testimony of Scott Murphy

**Conclusions of Law:** This permit will be made conditional upon the receipt of the appropriate engineer's certificate by the Zoning Administrator.

Standards B thru I of Section 610 are not applicable.

**K. Watercourse Carrying Capacity:** The flood carrying capacity within any altered or relocated portion of a watercourse shall be maintained.

**Findings of Fact:** The applicant has been issued a Stream Alteration General Permit by the State of Vermont Department of Environmental Conservation. Exhibit 4.

**Conclusions of Law:** This standard is satisfied.

Standard L of Section 610 is not applicable

## **ARTICLE VII STANDARDS**

### **Section 710: Use Performance Standards**

Pursuant to 24 V.S.A. § 4414(5) Performance Standards, the following standards shall apply to all uses and land development in the town.

- A. **Vibration:** No permanent, ongoing vibration shall be produced which, when transmitted, is discernible at the property line without the aid of instruments.  
Temporary vibration created during land development should be limited to daylight hours to preserve quality of life in neighboring properties.

**Findings of Fact:** No permanent, ongoing vibration will be produced after construction is completed. Such vibration as is produced during construction will be limited to the hours of 7AM to 8PM. Testimony of Murphy.

**Conclusions of Law:** This standard is satisfied.

- B. **Noise:** continuous, permanent or ongoing noise in excess of that of a normal conversation (in the judgement of the Development Review Board) must not exist at the property boundary line. Recurring periodic or intermittent noises in excess of that of a normal lawn mower (in the judgement of the Development Review Board) at the property line is allowed provided it does

not occur between the hours of nine (9) PM and seven (7) AM, and does not significantly detract from or diminish other property's allowed use or land development.

**Findings of Fact:** There will be noise of construction that will exceed normal conversation at the property line. However, the noise will only be for the construction period and will not be beyond the hours 7AM and 8PM. Testimony of Scott Murphy. An abutter, Eric Potter, was present at the hearing and raised no objections.

**Conclusions of Law:** This standard is satisfied.

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

1. Which can cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity.
2. Which can cause contamination of the subject property or beyond the property boundaries.
3. Which is composed of solid or liquid particles in concentrations exceeding current state authority standards.
4. Which causes emission of non-farming, odorous matter in such quantities, as determined to be offensive.

**Findings of Fact:** This is not a commercial operation. However, dust will be minimized through water controls. Testimony of Scott Murphy.

**Conclusions of Law:** This standard 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 may cause injury or damage to human or animal health, vegetation, or property.

**Findings of Fact:** The proposal will not employ any injurious or noxious practices. Testimony of Scott Murphy.

**Conclusions of Law:** This standard is satisfied.

### **Section 721: Conditional Use – General Standards**

In all districts, all Conditional Use development shall protect from undue adverse effects. No Land Development or use shall result in an undue adverse effect on any of the following:

- A. The capacity of existing or planned community, municipal or educational facilities;
- B. Impact on traffic, roads, highways, transportation systems, pedestrian walkways in the vicinity;
- C. By-laws and ordinances in effect at the time;
- D. Utilization of renewable energy resources;
- E. Air quality;
- F. The character, aesthetics, and scenic value of the neighborhood and area affected, as defined by the purpose or purposes of the zoning district within which the project is located and specifically stated policies and standards of this ordinance and the Town Plan.

**Findings of Fact:** The proposed development is the replacement of a municipal bridge. It will not adversely impact any of A thru F above. A temporary bridge will mitigate any impact on traffic and transportation. Testimony of Murphy.

**Conclusions of Law:** This standard is satisfied.

### **Section 730: Conditional Use – Specific Standards**

**A. Lighting and Glare:** All exterior lighting in the Historic Design Review District and Village District shall be in keeping with historic character of the commercial area of the village. All exterior lighting in all districts shall be shielded and downcast. Interior and exterior lighting, glare or reflection are prohibited if they:

- 1) Constitute an unreasonable nuisance to other property owners or tenants;
- 2) Are found to not contribute to the aesthetics, scenic value or character of the area and the community;
- 3) Could impair the vision of pedestrians or the driver of a motor vehicle or an aircraft.

**Findings of Fact:** No lighting is proposed by the project.

**Conclusions of Law:** This standard is not applicable.

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

**Findings of Fact:** Signage, cones and jersey barriers will be used to direct the public and to minimize safety issues during construction. All OSHA requirements and standards will be met as well as those of the Vermont Agency of Transportation. Testimony of Murphy.

**Conclusions of Law:** This standard is satisfied..

**C. Traffic and Pedestrian Safety:** Development shall provide for 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 traffic flow and efficiency.

**Findings of Fact:** The bridge that is being replaced had no walkways. The proposed bridge is of similar width and has no walkways. Signage is proposed to warn bridge users of oncoming vehicular and pedestrian traffic. Testimony of Murphy

**Conclusions of Law:** This permit shall be made conditional upon the applicant placing appropriate signage such as “Watch for Pedestrians and Vehicles” at either end of the bridge.

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

**Findings of Fact:** The bridge is being constructed by the Town to its standards. Testimony of Murphy.

**Conclusions of Law:** This standard is satisfied.

Standard E. of Section 730 is not applicable..

**F. Land and Water Management:** Pursuant to 24 V.S.A. Section 4414(1)(G) and 24 V.S.A. Section 4414(9) the development plan shall protect properties, transportation systems, and public safety by:

- a. Providing for safe and environmentally appropriate water management including but not limited to water supply/availability, storm water retention/absorption, and impervious surface runoff management.
- b. Preventing and controlling against water pollution
- c. Making provision for management of erosion, preservation of rivers and streams, river/stream banks, wetlands, waterways, channels and agricultural land.
- d. Preserving and promoting scenic or aesthetic features and open spaces.

**Findings of Fact:** Standards a, b and d do not apply. The applicant will supply the Zoning Administrator a copy of its erosion control plan.. Other portions of standard c above are addressed in Exhibits 3, 4 and 5. Testimony of Murphy.

**Conclusions of Law:** This standard will be satisfied upon the filing of the erosion control plan.

**H. 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 storm water detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural or manmade features, and renewable energy sources.

**Findings of Fact:** The proposed development is a replacement bridge with a temporary bridge upstream of the new bridge. The temporary bridge will be removed upon completion of construction. There will be no adverse impact on those items noted above not addressed elsewhere. Testimony of Murphy.

**Conclusions of Law:** This standard is satisfied.

**I. Wildlife Protection:** Development shall not have an undue adverse impact on wildlife habitats and wildlife corridors.

**Findings of Fact:** The development will not have an undue adverse impact on wildlife habitats and wildlife corridors.

**Conclusions of Law:** This standard is satisfied

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

**Findings of Fact:** See findings and conclusions above.

**Conclusions of Law:** This standard is satisfied.

**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. Any changes to the plans will require an administrative approval from the zoning administrator or a review by the Development Review Board, in conformance with the Zoning Ordinance.
2. The applicant will file with the Zoning Administrator the engineer's certificate as required by Section 610 A 1 above.
3. The applicant will file with the Zoning Administrator a copy of the erosion control measures which shall become Exhibit 8.
4. The applicant shall place cones, jersey barriers and signage during construction to minimize hazards to the public.
5. Post construction the applicant shall place appropriate traffic calming signage/devices at both entrances to the bridge to notify users to watch for pedestrians and vehicles.
6. The hours of construction will not exceed 7:00 AM and 8:00 PM.

The applicant is responsible for obtaining all state and federal permits.

**If unused, this Approval expires two 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:

Tim Hall  
Fred Houston  
Wendy Manners Seaman  
Peter Wallace

OPPOSED:

None

ABSTAINING:

None

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For the Board: Wendy Manners Seaman, Chairperson

Date: December 28, 2016

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.*