

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: **Michael & Eithne Eldred**

Owner's Mailing Address: **17 North Main Street, Wilmington, VT 05363**

Address of the entity to be served: **17 North Main Street, Wilmington, VT 05363**

Tax Map #**021-21-028.000**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2012-016

Description of Case per Public Notice:

Application # 2012-016; owner: Michael & Eithne Eldred. Application being made for Historic District review to allow installation of replacement doors and windows, new doors and window locations and a Variance for construction of decks at a Single-Family Dwelling; Zoning Ordinance Section 3.A & 6.B and Section 620; location: 17 North Main Street.

Notice for a public hearing was published in the Valley News on: **3/2/2012**

Notice was posted in three public places on: **2/29/2012**

A copy of the notice was mailed to the applicant on: **2/27/2012**

A copy of the notice was mailed to the abutters on: **2/27/2012**

The public hearing was held on: **3/19/2012**

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 Environment Court.

Appeal period for this Case expires on: April 27, 2012

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 (four pages)
 - A Existing Footprint
 - B Proposed Footprint
 - C Exterior photos (11 sheets)
 - D Door and window designs (3 sheets)
 - E Exterior wall photo
 - F Plot Plan
 - G Abutters List
 - H Set of five photos of the subject property (H-1 through H-5)
1. The subject property is in the Historic Review District and the Commercial District of the town of Wilmington. The building is known as DCD # 31.
 2. There is a single-family dwelling, a small barn, a garage and a machine shop on a very small (approximately 0.2 acre) lot. (Exhibit F) The house was built in about 1906. Although the address of the property is 17 North Main Street (also Vermont Route 100), vehicular and pedestrian access to the subject property is from Lisle Hill Road. Over the years as Route 100 has been widened and paved the original parking area; and stone steps that allowed access from North Main Street have become unusable. There is also a rock retaining wall about 5 feet high that runs along the road. (Exhibit H-4 & 5). The front of the house sits back approximately 6 ½ feet from the edge of the road. The house and barn are both about 5 feet above the road. There are places along the wall where vegetation obscures the view of the house and barn. The garage and machine shop are situated along Lisle Hill with, at some places, little or no setbacks from the road. From Lisle Hill, the property drops in “terraces” down to the house. The house is more than 42 feet from Lisle Hill Road. Another rock retaining wall runs parallel to the house. It is about six or seven feet from the house. There is limited visibility of the house and barn from Lisle Hill Road. (Exhibit H-1) Right now, the Applicants enter the house by walking between the house and the barn and use one of the doors on the porch.
 3. The proposed replacements or changes are as follows (Exhibit B):
 - Doors**
 - D1 – This door on the porch will be removed. The area will be filled in with wooden clapboards that will match the existing clapboards.
 - D2 – The existing door will be replaced with a new door. The door will have a full glass panel with grilles and be similar to #3000-2C or 3000-6C in Exhibit D. It will be barely visible from North Main Street.

D3 – The existing window will be replaced with a slider. The slider will be similar to 15/18 Lite in Exhibit D.

Windows – House

W1 – The existing window will be replaced by a casement window that will be wider and higher off the ground than the existing window. The new window will be similar to IFCA3060T in Exhibit D.

W2 – This will be a new place for a window. The removed window from W1 may be used or it may be a new, similar in style, window. It is not visible from Lisle Hill Road.

Windows - Barn

W3 & W4 – These two windows will be inserted into the openings behind the barn doors and be of similar size to the doors. The openings are approximately 3 ½ feet by five feet and 3 ½ feet by 3 ½ feet. The Applicant would like to retain the existing doors and would, at times, close them and cover up the windows.

W5 – This will be a new window in a new opening and will be about three feet by 4 feet. This window will not be visible from either road.

All new windows and doors will be vinyl clad with wood trim.

Other Changes - Barn

The attached greenhouse on the Lisle Hill Road side of the barn will be removed. Two windows will be put in this wall. The view of the windows will be blocked by the garage. A three by sixteen foot deck will be built along this side of the barn. Another deck measuring nine feet by fourteen feet will be built attached to the eastern side of the barn. The decks will extend out from the second story of the barn. Because of the variations in ground levels the 9 foot by 14 foot deck will extend over to ground level on the eastern side. There will be wooden framing extending out from the barn to form a pergola-like structure over the deck. This deck and pergola will be barely visible from North Main Street. (Exhibit H-4) The setbacks of this deck will be at least 20 feet from North Main Street and at least 13 feet from the eastern boundary.

Other Changes – House

Presently, the area between the rock wall and the south side of the house is dirt. There is also significant vegetation along the wall. (Exhibit C8) Because of the slope and the wall this area is very damp and, at times, hard to negotiate. At times, especially in the winter, it is quite dangerous. The Applicant proposes adding an attached deck running the length of the house and extending up to 5 ½ feet out from the house. The deck would begin about six inches back from the southwestern corner of the house at the end of the corner trim board. This deck will allow safe access to both the proposed slider and the existing door at the southwestern end of the house. The house setback on the western boundary is eight feet, eight inches. The proposed edge of the deck would be nine feet, two inches from the property line. The Applicant would also like to have a set of stairs that would extend up to three feet further into the setback.

The subject property is in the Historic Review District and requires a permit for Historic District Review.

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.”

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

Because the siting of the house and barn above Route 100 North and below Lisle Hill Road and the screening of the same buildings by vegetation and, on the Lisle Hill side, two other buildings, the proposed changes will hardly be noticed from the public way. All the proposed windows and doors are consistent in design with other buildings in the HRD as they will have grilles that mimic traditional New England architecture. Although they are vinyl clad, all trim will be wood. The added deck and wooden pergola on the barn will be significantly above Route 100 grade and will also hardly be noticed. The deck running along the Lisle Hill Road side of the house will not be visible from any public way. A significant architectural feature is the porch that faces Route 100. That will remain.

III. CONDITIONS for the Historic Review District:

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

1. All trim boards shall be wood.
2. All new windows and doors shall be consistent in placement, design and size with those shown during testimony and noted above.
3. The pergola shall be made of wood.

IV. Regarding the Variance criteria, the Board CONCLUDES:

The house was built before the adoption of zoning regulations in Wilmington, therefore, the required setback from a side property line is ten feet. The Wilmington Zoning Ordinance states that “no building existing at the time of adoption of this ordinance may be added to or constructed in any direction nearer than twenty (20) feet from the public road limits or ten (10) feet from any property line.” (Sec. 3.A.(2)) If very strictly construed, any proposal for new construction within the ten foot setback should be denied. However, the Board concludes that the construction of a deck that does not increase the degree of non-conformity and has an area within the ten foot setback of only ten inches by five and a half feet is “de minimus” when considering a variance. To

further explain the Board's conclusion, it has applied the variance criteria to the proposed deck.

- 1. That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located.**

The non-conforming lot is very small and has a total of four buildings on the lot. It is bordered by two roads, one of which is a state highway. The lot has great variations in elevations as the house sits approximately five feet above Route 100 and well below Lisle Hill Road. Although the neighboring lot is also small, the subject property is unique in both its small size and topography.
- 2. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of variance is therefore necessary to enable the reasonable use of the property.**

There have been buildings on the lot for at least 100 years so the property has been developed. However, because of changes to the property over the years safe access to the property has been compromised. Originally, the main vehicular and pedestrian access was from Route 100. This is no longer true and access is from Lisle Hill. Those coming to the house must come down a steep incline and through a narrow opening between the house and barn to order to enter through the doors facing Route 100. Safety concerns would dictate access to the house through a door on the south side. However, without a walkway this area is treacherous at best. The proposed deck allows for safe egress and, therefore, reasonable use of the property.
- 3. That the unnecessary hardship has not been created by the appellant.**

The widening of Route 100 and encroachment into the subject property over the years was not created by the Applicant but through actions of the State of Vermont. It is the widening of the road that has made access to the residence from North Main Street or between the two buildings unsafe.
- 4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, or reduce access to renewable energy resources, or be detrimental to the public welfare.**

The deck would not be noticed from any public way. The neighboring house is oriented away from this end of the subject house.

5. **That the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.**

A variance of ten inches will afford relief and, therefore, represents the least deviation from the regulations.

The Board concludes that this proposal that would result in a **ten inch encroachment** into the ten foot setback is “de minimus”, does not increase the degree of non-conformity and also meets all the criteria for a variance and **does approve this request**. It does not approve the request for wooden stairs that would extend another three feet into the setback.

V. CONDITIONS for the request:

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

1. The deck shall be no closer than nine feet two inches to the western property line.

Thus, the Development Review Board does **approve** with the conditions listed above the application for construction of decks and pergola, the removal of a greenhouse and replacement, removal and/or addition of doors and windows in the Historic Review and Commercial Districts.

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
Andrew Schindel
Paul Tonon
Gil Oxley
Dave Kuhnert

OPPOSED: None

For the Board: Polly Steel, Chairperson

Date: 3/28/2012

Appeal Rights: An interested person may appeal this decision to the Vermont Environmental Court, pursuant to 24 VSA 4471 and VRCP 76, 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.