

TOWN OF WILMINGTON
DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT AND STATEMENT OF FINDINGS
WILMINGTON, VERMONT 05363

An appeal of an action by the Zoning Administrator granting Zoning Permit number 2017-008 was made to the Board by: Heather Frost

Appellant's Mailing Address: Heather Frost, 407 Basin Road, Vernon, VT. 05354

Appellee's Mailing Address: Brad and Colleen Palmiter, 86 Connelly Drive, Staatsburgh, NY 12581-6132

Address of the subject property: 288 Old Mill Lane

Tax Map: # 09-01-053

A copy of the request is filed in the office of the Board and is referred to as: **Case # 2017-008**

Description of Case per Public Notice:

Application # 2017-009 (sic); Owner: Brad & Colleen Palmiter, Appellant: Heather Frost. Application is being made for an appeal of an administrative decision, Residential zoning district. Section 222(I). Location: 288 Old Mill Lane

Notice for a public hearing was published in the Valley News on: **April 13, 2017**

Notice was posted in three public places on: **April 13, 2017**

A copy of the notice was mailed to the applicant on: **April 12, 2017**

A copy of the notice was mailed to the abutters on: **April 12, 2017**

Public hearing was held on : May 1, 2017
There was no Site Visit.

Action taken on this appeal 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: June 18, 2017

Approval expires on: May 18, 2019

In *addition* to the Appellant, the Appellee and counsel for the Appellee, Robert Fisher, the following persons, heard by the Board in connection with this request, were determined by the Board to be “interested persons”:

Todd Frost
Michael Norris

Copies of this decision have been mailed to those persons listed below.

Heather and Todd Frost
Brad and Colleen Palmiter
Michael Norris

The following presented testimony on behalf of the Appellant or Appellee:

Ben Joyce – P.E.
Patrick Kitzmiller – Design Consultant

EXHIBITS

The following Exhibits were placed in evidence by the Appellant or the Appellee:

1. Appellant’s written narrative consisting of 2 pages.
2. Scale drawing of elevation of Palmiter Lot #2
3. Scale drawing of elevation Lot #4
4. Scale drawing of elevation Lot #1
5. Scale drawing of elevation Lot #5
6. Mass/Bulk Comparison of existing and proposed Palmiter reconstruction
7. Proposed definition of “Footprint”.
8. Plot Plan prepared for Bradley & Colleen Palmiter, 288 Old Mill Lane, Wilmington Parcel No. 09-01-053, Wilmington, Vermont dated Jan 30,2017 by Joyce Land Surveying Corp.
9. Collated design plans entitled “Palmiter – Feb 2017” by Austin Design Inc. consisting of 11

pages. Page 3.2 missing.

10. Zoning application of Brad and Colleen Palmiter for 288 Old Mill Lane dated March 2, 2017 consisting of 3 pages
11. Application for Appeal by Heather Frost dated March 6, 2017 consisting of 2 pages
12. Town of Wilmington Vermont Zoning Permit number 2017-008 issued March 2, 2017
13. "Request for extension" dated 9/28/16 by Valley View Builders with no addressee.
14. Sheet entitled "Palmiter Project Timeline of Events: 288 Old Mill Lane Wilmington, VT, Parcel No 09-01-053, DRB Meeting Nov 7, 2016" prepared by Patrick Kitzmiller at Austin Design Inc.
15. Wastewater System and Potable Water Supply Permit WW-2-2618-2 dated November 4, 2016
16. Letter from John E. Dupras, P.E of Trinity Engineering to Mrs. Colleen Palmiter dated October 3, 2016.

SYNOPSIS

This is an appeal of the granting of a zoning permit under Section 431 A 6 for the reconstruction of a non-conforming structure on a pre-existing non-conforming lot. The lot is a rectangle of 4731.47 square feet (0.11 acres) and is surrounded by lots of similar size and shape. (Exhibit 8) The original structure was a one family dwelling and was demolished October 30, 2014. (Exhibit 14) The proposed structure, also a one family dwelling, has been changed under Section 431 A 5 from the original footprint. (Exhibit 9 at page 2.1) The immediate neighborhood consists of small dwellings with exterior privies. (Exhibits 3 thru 5 and 8) The proposed structure is considerably larger. (Exhibits 6 and 9) The zoning district in which the project lies is Residential and governed by Section 450 C.

ARGUMENT

The appellant argues that the proposed structure would violate Section 721 F, the character, aesthetics, and scenic value of the neighborhood and area affected, Section 722 F, development shall conform to the scale of the established neighborhood, and Section 232 F 2 & 6, the character and aesthetics of the neighborhood and the preservation of open space or scenic vistas. In essence, she argues that the building is too large for the neighborhood and not in scale. She has presented various exhibits to support her position. See Exhibits 1 thru 6.

Unfortunately, the sections of the zoning by-law cited by the appellant do not apply to this case. Sections 721 and 722 apply to conditional uses and Section 232 applies to waivers of dimensional requirements. A one family dwelling is a permitted use under Section 450 C 3 and is allowed as long as it complies with Section 431 A 6. No waiver was sought by the Palmiters in their application and none was granted by the Zoning Administrator.

The appellant raises an additional objection that the "existing footprint" should not include the entrance stairs and open deck. She would define "footprint" as "The ground area enclosed by any

permanent foundation, wall, footings, and piers, excluding those under a deck.” (Exhibit 7) However, while “footprint” is not specifically defined in Article X General Definitions, Section 431 A 1 allows change to a non-conforming element within the footprint “including any overhangs or cantilevering”. Further, where changes to a non-conforming structure are proposed, Section 431 A 5 uses the example of a “deck” that has a greater encroachment than a house which also encroaches with the greater encroachment of the deck governing. The Board does not conclude that the inclusion of the entrance stairs and deck is erroneous.

However, as the application is before us on appeal of the Zoning Administrator’s grant of a permit under Section 431 A 5 and 6, this Board may examine whether the applicant has met the requirements of those sections.

The threshold question of Section 431 A 6 is whether the reconstruction has or will commence within two years of the date of destruction or demolition. Exhibit 14 gives the date of demolition of the existing camp as October 30, 2014. Reconstruction must therefore begin by October 30, 2016. The Vermont Supreme Court has shed light on what is considered “commencement of construction”. It has held that construction has commenced if “viewed as a whole – the work, time, and expenditures invested in the project demonstrate a good faith intent to presently commence upon the permitted use”. In re Appeal of Beckstrom, 176 Vt. 622, 624 (2004). In the present case, the Appellees had a design of a septic system completed and submitted to the Vermont Department of Environmental Conservation on October 3, 2016. (Exhibit 15 and 16). Considerable planning and building design work took place in 2016 prior to a hearing before this board in early November 2016. (Exhibit 14). On these facts, the Board considers that, under the test set out in Beckstrom, reconstruction commenced prior to the end of the two year period.

The Appellees have submitted as Exhibit 13 a letter from Zak Hitt, Valley View Builders dated September 28, 2016 entitled “Request for extension”. The letter is not addressed to any individual or entity and, according to Appellee’s counsel, has not been acted upon. The Board has not considered this in its decision as there is no evidence that it was ever received by anyone in the Town of Wilmington who could act on the request.

The next question to be determined is whether there is evidence that the proposed reconstruction complies with any additional requirements of Section 431 A.

Section 431 A 1 requires that any reconstruction or change be within the “footprint of the of the original non-conforming element or feature, including any overhangs or cantilevering”. Evidence of this footprint must be clearly established and maintained with the burden of proof on its location remaining with the property owner seeking to rebuild. Section 431 A 2. To meet this burden the Appellees have submitted a plot plan by Joyce Land Surveying Corp and site plan by Austin Design showing the location of the original camp. Exhibit 8 and Exhibit 9 at page 2.1. Ben Joyce, who prepared the plot plan, testified that, despite the camp having been demolished, he had found the northeast and northwest corner concrete pylons of the original building. Using these together with the dimensions of the building shown on the property card maintained by the Wilmington Board of Listers, he was able to determine its location. The Board considers this condition satisfied.

The plans of the proposed structure do not precisely follow the original footprint as shown. However, as discussed above, Section 431 A 5 allows change to a non-conforming structure so long

as the change does not encroach further into the setback. Here, the steps on the east side of the old camp give a distance of nine feet to the side lot line. Exhibit 8. Under the referenced Section, this distance becomes the new side yard setback on the east side. Exhibit 8 shows no other dimension extending beyond the original building location. The Board considers that the Appellees have met the requirements of Section 431 A.

The proposed structure complies with the height limitations of twenty-four feet to the eave line from average grade. Section 450 C 5 and Exhibit 9 pages 4.1 thru 4.4

CONCLUSION

For the above reasons the Board denies the appeal..

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

If unused, the underlying Permit 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 Decision becomes final.. Work may commence when 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:

Peter Wallace
Fred Houston
Tim Hall
Paul Lockyear

OPPOSED: None

ABSTAINING: None

For the Board: Fred Houston, Acting Chairperson

Date: _____

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.