

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: **Steven Kormes**

Agent(s) Mailing Address: **Lance Shader, PO Box 2389, West Dover VT, 05356**

Owner/Applicant(s) Mailing Address: **413 Highbridge Court, Peekskill, NY 10566**

Address of the subject property: **67 Mowing Way, Wilmington, VT 05363**

Tax Map #**HSDAVISM.043**

A copy of the request is filed in the office of the Board and is referred to as:
Case #: 2014-002

Description of Case per Public Notice:

Application # 2014-002; owner: Steven Kormes; Agent, Lance Shader.
Application being made for waiver review to allow construction of a deck of
350 sq. ft. at a Single-Family Dwelling; Zoning Ordinance Section 513 &
514; location: 67 Mowing Way.

Notice for a public hearing was published in the Valley News on: **2/14/2014**

Notice was posted in three public places on: **2/14/2014**

A copy of the notice was mailed to the applicant on: **2/14/2014**

A copy of the notice was mailed to the abutters on: **2/14/2014**

The public hearing was held on: **3/3/2014**

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 16, 2014

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 Plot plan
 - B Abutters List
 - C Plot plan with house dimensions
 - D Lister's sketch
 - E Survey "Lands of Daniel Bolduc" by Joyce Land Surveying, 06/22/2012.
1. The subject property is in the Residential District of the Town of Wilmington. The property is identified as Tax Map HSDAVISM.043. The lot is .25 acres.
 2. Lance Shader spoke for the application.
 3. The house is approximately 36 by 28 feet with a square footage of 1,008 square feet. The deck is 7 feet by 25 feet with a square footage of 175 square feet. No permit was ever received for the deck prior to its construction.
 4. The house was built in 1995. The original deck was torn down and rebuilt to its current larger dimensions prior to Mr. Kormes purchasing the property. No survey was performed when the property changed hands.
 5. The neighbor, Daniel Buldoc, discovered that Mr. Kormes' garden shed was partially on his property (see Exhibit E) and notified Mr. Kormes. It was then discovered that the deck is .64 feet from the Kormes/Bolduc property line.
 6. The front setback is approximately 50 feet. The back setback is approximately 55 feet. The side setback (non Buldoc side) is approximately 30 feet.

II. Regarding the Waiver criteria, the Board CONCLUDES:

There were conflicting dimensions given for both the house footprint and the deck. Exhibit C gives the footprint as 35 feet by 28 feet and the deck as 23 feet by 7 feet. Testimony was given that the house footprint is 36 feet by 28 feet and the deck is 25 feet by 7 feet. The Board is using the dimensions given in testimony. Even if Exhibit C's dimensions were used, the conclusions of the Board regarding the Waiver criteria would be the same.

Approval for construction of Applicant's building addition does not conform to the Town of Wilmington dimensional standards for the Residential District and requires approval of a Waiver. With regards to the criteria for a Waiver, the Board concludes that this proposal *does not* meet all the Waiver criteria of the Wilmington Zoning Ordinance and the following standards:

513. The DRB may grant a Waiver (see also Section 520.A.5) provided all of the Waiver criteria below are satisfied:

- 1. The proposal is for an addition to an existing principal or accessory building, and said addition does increase the footprint of the building by more than five (5) percent, or by more than two hundred (200) square feet, whichever is less.** The addition of the deck to the building increases the footprint by 17.3 %. This percentage is more than three times the allowed 5% increase.
- 2. The Waiver is the minimum reduction in the dimensional requirement that will enable the reasonable use of the property.** The Board received no testimony indicating that the owner would be unable to have reasonable use the property without the deck.
- 3. No front setback shall be reduced to less than two (2) feet.** A Waiver is not being sought for the front setback. The front, rear and other side setbacks all meet the requirements for the District.
- 4. The proposed project will not have an undue adverse effect on the following:**
 - a. The use of surrounding properties;**
 - b. The character and aesthetics of the neighborhood;**
 - c. Traffic patterns and circulation;**
 - d. Public health, safety, and utility services;**
 - e. Stormwater managements;**
 - f. Water and wastewater capacity;**
 - g. The proposed development will not impede the preservation of open land or scenic vistas, where appropriate.** There *will not* be an undue adverse effect on 4.a. through 4.g.
- 5. The need for a Waiver was not self-created by past decisions of the applicant.** The former owner removed an old deck and built the current deck without permits or checking the property lines. When Mr. Kormes purchased the property, he did not have a survey done to show where the property lines were. Therefore, the need for a Waiver was caused by the past decisions of both the Applicant and former owner.
- 6. The proposed project will still conform to the Town Plan and the purpose of the zoning district in which the land development is located. Yes**

III. CONDITIONS for the Waiver request:

N/A

Thus, the Development Review Board *does not* **approve** the application.

There is a thirty (30) day appeal period from the date of signature before this Approval becomes final.

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:

OPPOSED:

Nicki (Polly) Steel
Sherry Brissette
Sheila Osler
Gil Oxley

For the Board: Polly Steel, Chairperson

Date: 3/17/2014

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.