

**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 Karen Molina

Owner/Applicant(s) Mailing Address: PO Box 772, Wilmington, VT 05363

Address of the subject property: **69 Ray Hill Road, Wilmington**

Tax Map:#20-20-30.000

A copy of the request is filed in the office of the Board and is referred to as: **2021-051**

**Description of Case per Public Notice:**

Application # 2021-051 Owner: Karen Molina. Property Address: 69 Ray Hill Road, Wilmington.

Proposal: Reconstruct existing nonconforming one-car garage with an 8-foot extension on the back to create a one-bedroom accessory dwelling unit above the garage with a 4-foot cantilever to the East where a steep ledge embankment exists.

**Applicable Code Sections:**

Article II -Sections: 222, 223, 224, 226, 227, 229, 231, 234

Article IV -Sections 430; 431; 440; 450 C

Article VII -Sections 705; 706; 710 A, B; 720; 721 F; 730 F, H

Notice for a public hearing was published in the Valley News on: **July 29, 2021**

Notice was posted in three public places on: **July 28, 2021**

A copy of the notice was mailed to the applicant on: **July 28, 2021**

A copy of the notice was mailed to the abutters on: **July 28, 2021**

**Hearing Date: August 16, 2021**

**Appeal period for this Case expires on: October 3, 2021**

**Approval expires on: September 2, 2023**

The following presented testimony as the applicant or on behalf of the Applicant or as an Interested Person:

Karen Molina

Sara Molina

**EXHIBITS**

The following Exhibits were placed in evidence by the Applicant:

1. Application – 3 pages
2. Hearing Notice
3. Photograph of garage
4. Boundary Survey 3 pages
5. Hand drawing of garage with dimensions
6. Design of proposed new garage by JG Design Services, Inc 3 pages
7. Email from Dave and Kathy Larsen

8. Abutter List and letter from Town 2 pages
9. Map of Lots
10. Email from Stephanie Bartlett
11. Loft Floor Plan JG Design Services, Inc.
12. Photographs of current garage 2 pages
13. Pictures of garage from 1960's

**SYNOPSIS:**

The application is to demolish and reconstruct the nonconforming existing garage with an extension off the back to add an accessory one-bedroom dwelling unit above the garage.

**ARTICLE II**

Sections 222, 223, 224, 226, 227, 229, 231, 234

**Findings of Fact:** This standard has been met, all exhibits have been received & verified.

**Conclusions of Law:** Article II is met.

**ARTICLE IV: DISTRICTS & USES**

Section 430 Legal Non-Conformities

A nonconforming Structure, Lot and/or Use is a Structure, part of a structure, a Lot (or parcel) and/or a Use that does not comply with the present ordinance, but which was developed legally in conformance with the ordinance in effect that the time it was created or established. This includes:  
B: All Structures, part of Structures, Lots and/or uses existing prior to January 26, 1968, when the first Wilmington zoning ordinance was adopted.

**Findings of Fact:** Structure was built prior to 1968

**Conclusion of Law:** Section 430 is met.

**Section 431 Changes to Legal Nonconforming Structures, Lots and Uses**

Nonconforming Structures, Lots & uses shall be allowed to exist indefinitely, in accordance with 24 V.S.A 4303 & 44412

**A. Legal Nonconforming Structures**

Any alteration, renovation or change for the purpose of compliance with environmental, safety, health or energy codes will be allowed to increase the degree of nonconformity, but only to the extent necessary to achieve compliance.

A nonconforming Structure may be altered, renovated or changed in any direction for any reason, including routine maintenance and repair, so long as it will not increase the degree of nonconformity. Changes to non-conforming structures are allowed to the extent that:

1. The change to the non-conforming element of the structure remains within the footprint or the original non-conforming element or feature, including any overhangs or cantilevering.
2. Evidence of the footprint of the original non-conforming structure must be clearly established & maintained by the property owner seeking to rebuild within the footprint of the original non-conforming structure. This burden of proof as to the location of the original structure remains with the property owner seeking a Permit for such a change.
3. The change shall not increase the degree of non-conformity or encroachment into a setback.
4. A change will be considered a further encroachment of the non-conforming feature or element when it comes closer to the property line, or encroaches further into a setback, or further exceeds a height limitation creating the non-conformity.
5. A change will not be considered an increase in the degree of non-conformity provided that the change does not come closer to the property line, or encroach further into a setback, or further exceeds a height limitation creating the non-conformity. For example, if a house encroaches fifteen (15) feet into that same setback, the house and the deck could be increased in size to the extent that no part of the structure encroaches more than existing encroachment of fifteen (15) feet into the setback. The house could be expanded up to five (5) feet, and the deck could be continued so long as it did not encroach more than fifteen (15) feet into the setback.

**B. Legal Nonconforming Uses**

A nonconforming use may be altered or changed for any reason so long as, in the opinion of the Zoning Administrator, it will not increase the degree of nonconformity.

Any Nonconforming use which is not actively engaged in for a period of twelve (12) months shall be considered a discontinued use and the property will become subject to the requirements of this ordinance unless extension is granted by The Development Review Board.

**Findings of Fact:** Structure was built prior to 1968; applicant will be expanding nonconforming structure by 9' with construction of staircase & mechanical room. This change will not move closer to property line or encroaches further into setback.

**Conclusions of Law:** Section 431 is met.

**Section 440 District and District Requirements**

**Findings of Fact:** The subject property is in the Residential District.

**Conclusions of Law:** Section 440 is met.

**Section 450: Districts**

**DISTRICT**

**Findings of Fact:** Subject property is in the Residential District. The property is identified as Tax

Map: # ----,----,----

**Conclusions of Law:** The proposed land development is subject to zoning applicable to the Residential District.

**USES**

**Finding of Facts:** The Primary Use of the structure is Residential

**Conclusions of Law:** The proposed Uses are Conditional Uses in this district.

**ARTICLE VII: STANDARDS**

**Section 705 Changes to Nonconforming Structures, Lots and/or Uses**

**Findings of Fact:** Subject property was built prior to 1968.

**Conclusions of Law:** Section 705 is met.

**Section 706 Nonconforming Structures on Developed Land/Lot**

**Finding of Facts:** Not applicable

**Conclusions of Law:** Section 706 is met.

**Section 710: Use Performance Standards**

A. **Vibration:** No continuous, permanent, ongoing, or frequent vibration that is discernible at the property line.

**Findings of Fact:** The proposed change will not cause any vibration

**Conclusions of Law:** This Use Performance Standard is met.

B. **Noise:** Continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation must not exist at the property line. Recurring periodic noise in excess of that of a normal lawn mower at the property line is allowed provided it does not occur between the hours of 9PM and 7AM and does not significantly detract from or diminish other property's allowed use or land development.

**Findings of Fact:** The proposed change will not increase noise.

**Conclusions of Law:** This Use Performance Standard is met.

**Section 720 Applicability of Conditional Use Standards and Site Plan and Design Guidelines**

**Findings of Fact:** not applicable

**Conclusions of Law:** Section 720 is met.

**SECTIONS 721: Conditional Use - General Standards**

The proposed use shall protect against adverse effect on:

F. **Character of the Area**

**Findings of Fact:** Proposed use will not have any adverse effect on Residential District.

**Conclusions of Law:** Section 721 is met.

**SECTION 730: Specific Standards**

F. **Landscaping, Screening and Development:** Shall "preserve the rural and agricultural character and ambiance of the community". Natural features characteristic of the town's rural and agricultural nature shall be preserved. Landscaping and Screening shall be used to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

**Findings of Fact:** Landscaping and Screening opportunities to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties include

removal of existing tree behind subject building; all neighbors have agreed to remove of tree.

Additional trees will be placed to provide screening for adjacent properties.

Conclusions of Law: Standard 730 F is conditionally met

H Wastewater and Potable Water: A permit may be issued upon receipt of evidence there is a wastewater and potable water permit. If none is received with a submitted application, the Permit will be conditioned on receipt of a wastewater and potable water permit at which time a final Permit will be issued. DRB shall instruct the applicant on their responsibility to obtain state and federal permits and may condition their decision on obtaining such permits.

Findings of Fact: Applicant provided testimony that they have been approved for additional sewer allocation & water permit.

Conclusions of Law: Standard 730 H is met.

#### 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 1-12 the testimony provided. Any changes to the plans will require an administrative approval from the Zoning Administrator and/or a review by the Development Review Board, in conformance with the ordinance.
2. As noted in testimony, the adjacent to property have agreed to landscaping plan, applicant must provide to ZA a letter from neighbors agreeing to plan including removal of tree on both properties.
3. As noted in Section 431, applicant must mark the corners of the original footprint of the building.
4. Applicant must provide to ZA letter of approval from owner adjacent to property; letter must be property owners Arnold & Linda Bernard.

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

**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.

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:

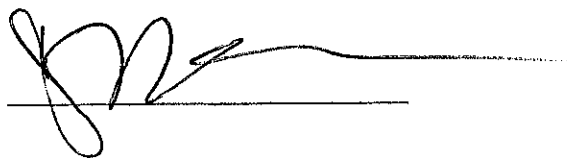
Charles Foster  
Chrystal Holt  
Cheryl LaFlamme  
Justin Linder

#### OPPOSED:

None

#### ABSTAINING:

None



Date: 9/3/21

For the Board: Cheryl LaFlamme, Chairperson

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).

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*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.*

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