

**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 & Deborah Kokinos**

Owner/Applicant(s) Mailing Address: 3 Brantwood Road, Arlington, MA

Address of the subject property: **21 Island Drive, Wilmington**

**Tax Map ID: # 22-21-047.000**

A copy of the request is filed in the office of the Board and is referred to as: **#2021-078**

**Description of Case per Public Notice:**

Application # 2021-078: Steven & Deborah Kokinos

Agent: Elizabeth Herrmann, AIA

Applicable Code Sections:

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

Article IV –Sections 430, 431, 440; 450 C

Article VII –Sections 705, 706, 710 A-B, 720, 721 F, 730 F and H.

Notice for a public hearing was published in the Valley News on:

Notice was posted in three public places on: **10/13/2021**

A copy of the notice was mailed to the applicant on: **10/14/2021**

A copy of the notice was mailed to the abutters on: **10/14/2021**

**Hearing Date: November 1, 2021**

**Appeal period for this Case expires on: January 12, 2022**

**Approval expires on: December 12, 2023**

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

Steven Kokinos  
Elizabeth Herrmann

**EXHIBITS**

The following Exhibits were placed in evidence by the Applicant or their Agent:

A. Application – 6 pages

- B. Site Plan (1) page
- C. Garage Elevations (1) page
- D. Shoreland Protection Permit (multiple pages)
- E. Photos (2) pages
- F. Notice to Abutters (1) Page
- G. Abutter's List (9 pages)
- H. Enlarged Site Plan
- I. Garage Plans

**ARTICLE II: ADMINISTRATIVE PROCEDURES**

Section 222: Land Development & uses requiring Development Review Board written Decision & Approval

Section 223: DRB Site Plans & Design Review

Section 224: DRB Submission Requirements

Section 226: DRB Decisions

Section 227: Plan Changes after receiving DRB Decisions

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

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

**ARTICLE IV: DISTRICTS & USES**

Section 400 Establishment of Zoning

Section 430: Nonconformities

Section 431: Changes to Legal Non-Conforming Structures, Lots & Uses

Section 441: Height Limitation – Non-conforming structures are not permitted to be over 30' – no exceptions are permitted.

Section 450: District Purposes and Description

**Section 430: Nonconformities (See 24 V.S.A. § 4412 (7))**

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:

**Finding of Facts:**

1. Structure is non-conforming since it sits within the 20' rear and side yard setback.
2. Lot is non-conforming as it exceeds the density limit for Residential Zoning. 29.2% of lot is covered. Under the current Zoning 25% Max Lot Coverage is permitted.
3. Lot size is 18,850 sf or less than the 1-acre minimum required by Zoning.

**Conclusions of Law:** Both the lot and the garage meet the definition of a non-conforming lot and structure since both were legally developed prior to the current ordinance.

**Section 431: Changes to Legal Non-Conforming Structures, Lots & Uses**

Nonconforming Structures, Lots, and uses shall be allowed to exist indefinitely, in accordance with 24 V.S.A. § 4303(16) and § 4412(7).

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 of 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 and maintained by the property owner seeking to rebuild within the footprint of the original non-conforming structure. The 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 ten (10) feet into a setback and an attached deck 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 the greatest existing encroachment of fifteen (15) feet into the setback. The house could be expanded by 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.
6. A non-conforming structure which is destroyed or demolished may be restored to its earlier state provided the reconstruction commences within two (2) years of the date of loss and with the written approval of the Zoning Administrator for Permitted Uses or the Development Review Board for Conditional Uses. The Zoning Administrator

C: Legal Nonconforming Existing Small Lots (Sec 24 V.S.A. § 4412(2))

1) **Minimum Lot Size – Nonconforming Existing Small Lot**

Any undeveloped lot in existence on or before the date of adoption of this ordinance may be developed for the Permitted or Conditional Uses listed for the District in which it is located and in compliance with all regulations for that District, even though not conforming to minimum lot size requirements for that District, provided:

- a) The lot was legally created.
- b) The lot has, or will have, a water supply system and wastewater system that comply with the Wastewater System and Potable Water Supply Rules currently in effect.
- c) The lot is not less than one-eighth (1/8) acre in area with a minimum width or depth dimension of forty (40) feet as defined in the property deed. In the event there is a question as to property boundary and whether a property satisfies these criteria, the applicant may be required to submit a survey of the lot by a Vermont licensed surveyor, and shall have said surveyor pin the lot.

**Finding of Facts:**

1. The proposed Structure does not increase the degree of non-conformity. The lot is a legal non-conforming existing small lot as defined in section 'C' above.

**Conclusions of Law:** Both the small lot and the proposed rebuilding of the garage do not increase the degree of non-conformity and are therefore allowed.

**Section 441: Height Limitations**

Nonconforming Structures and Land Development to Nonconforming Lots shall not exceed thirty (30) feet to the highest point of the ridge line. (See Section 705 – 709 for Nonconforming Structures, Lots and/or Uses) Nonconforming Structures and Land Development of

**Finding of Facts:** The new proposed non-conforming structure measures 25' - +/- inches to the highest point.

**Conclusions of Law:** Height Limitation is met.

**Section 450: District Purposes and Description**

**C. Residential District (RES)**

1. Purpose: To provide areas for dwellings and low impact Uses with consideration being given to historic settlement patterns, aesthetics, natural resources, and economic vitality.
2. Description: Lands in this District are already committed to residential development and comprise the remainder of land in Town not designated in any other district.
3. Permitted Uses, Residential District:  
(Requiring a zoning Permit)
  - Accessory Apartment
  - Accessory Use
  - Boundary Line Adjustment
  - Dwelling, One Family
  - Dwelling, Two-Family or Duplex
  - Dwelling, Seasonal
  - Family Child Care Home
  - Group Home, 1-8 residents
  - Subdivision of land, five or fewer Lots
  - Temporary Retail Stand

5. Site Criteria - Residential District:

<b>Density Limits</b>	Maximum of 25% Lot Coverage: 1 dwelling unit plus an Accessory Apartment or 1 two-unit dwelling per acre. Fences are not counted toward density limits.
<b>Structures/Uses Per Lot</b>	Maximum of : 1 Principal Structure and 1 Principal Use. Home Business and Home Industry are not considered Principal Uses. A second dwelling in a separate Principal Structure may be constructed on any Lot with more than three acres. Fences are not counted toward Structures limits.
<b>Dimensional Requirements – New Lots</b>	
<b>Minimum Lot Size:</b>	1 Acre
<b>Minimum Lot Frontage:</b>	150 ft
<b>Minimum Lot Depth:</b>	150 ft
<b>Structure Height (Max):</b>	38 ft to the highest point of the ridge line All Structures over 24 feet from average grade to the eave line or 38 feet to the ridge line are subject to Development Review Board written decision and approval. *
<b>Setback-Front (Min):</b>	40 ft Measured from edge of the actual or proposed road right-of-way
<b>Setback-Side/Rear (Min):</b>	20 ft Measured from the property line

\*See Section 441 – 443 for Structure Height Maximum information and Section 706 (D) and 707 (C)(3) for special height limitations to Nonconforming Structures and Lots.

**Finding of Facts:** Subject Property is in the 'C' Residential district. The Primary Use of the Property is Residential.

**Conclusions of Law:** The proposed Accessory Use/Apartment is Permitted

## **ARTICLE VII: STANDARDS**

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

[See 24 V.S.A. §§ 4303(13)(14)(15)(16) and 4412(7)].

- 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 created or established legally in conformance with the ordinance in effect at the time it was created or established. [See 24 V.S.A. §§ 4303(13 - 16) and 4412(7)] This includes:
1. Structures, Lots and/or Uses improperly authorized as a result of error by the Zoning Administrator.
  2. All Structures, parts of Structures, Lots and/or Uses existing prior to January 26, 1968, when the first Wilmington zoning ordinance was adopted.
- B. **Nonconforming Structures, Lots and/or Uses** created or established legally in conformity with the ordinance in effect at the time it was created or established:
1. Structures and lots shall be allowed to exist indefinitely.
  2. Will not be subject to penalties for nonconforming elements that were in conformity with the ordinance in effect at the time they were created or established.
  3. Uses, if not used shall expire in two years.
  4. May be altered, renovated, changed, or developed in accordance with the requirements of Sections 706, 707, and 708.

**Finding of Facts:** Subject Property lot and garage are legal nonconforming.

**Conclusions of Law:** Proposed garage may be altered, renovated, changed or developed in accordance with the requirements of Sections 706, 707 and 708. Condition is met.

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

- B. A Nonconforming Structure on a Developed Lot/Developed Land may be modified consistent with the guidelines of this Section with the prior written decision and approval of the Development Review Board. Modifications to Nonconforming Structures are not eligible for a Waiver.
- D. No alteration, renovation, or change shall exceed thirty (30) feet to the highest point of the ridge line. Nonconforming Structures and Land Development of Nonconforming Lots are not eligible for Height Limitation Exceptions – Review Options under Section 442 of this ordinance or for Waivers under Section 231 of this ordinance.

- E. A Nonconforming Structure on a Developed Lot may be altered, renovated, or changed in any direction for any reason, with the written decision and approval of the Development Review Board (except as provided for in item F below), provided that:
  - a. remains within the footprint of the original.
  - b. does not increase the degree of non-conformity.

**Findings of Fact:** Proposed garage is within the original footprint and does not increase the degree of non-conformity.

**Conclusions of Law:** Condition is met.

### **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 continuous, permanent, ongoing, or frequent 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.
- B. Noise: continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation (in the judgment 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 judgment 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:** Testimony from applicant confirmed there would not be excessive Noise or Vibration as a result of new structure.

**Conclusions of Law:** Condition is met.

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

Conditional Uses are subject to both General and Specific Standards as defined below. Site Plan and Design Guidelines of Appendix I shall be applied to development within the Historic Design Review District and are recommended in all other districts.

The Development Review Board will complete a Site Plan Review and a Design Review as needed to determine conformity with the Standards of this Article VII.

**Findings of Fact:** The DRB completed a Site Plan & Design Review based on applicants exhibits and testimony.

**Conclusions of Law:** Condition is met.

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

In all districts, all Conditional Use development shall protect from undue adverse effects: (24 V.S.A. § 4414 (3)(A)). 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:** Testimony by applicant that Use will not result in undue adverse effect on items A-F.

**Conclusions of Law:** Condition is met.

### **Section 730: Specific Standards (24 V.S.A. § 4414 (3)(B))**

The Development Review Board shall refer to the Existing Land Use, Natural Resources, Special Resource Areas, Water Resources, Transportation System, and Community Facility and Utilities Maps of Appendices IV – IX to aid their decisions on proposed land development, including but not limited to the following areas:

1. Lands Over 2500 Feet in Elevation
2. Surface Waters
3. Water Source Protection Areas
4. Flood Hazard Areas
5. Deer Wintering Areas
6. Wildlife Crossings
7. Rare and Threatened Plants
8. Scenic Areas
9. Scenic Roads
10. Impact on Community Facilities and Utilities
11. Impact on Transportation Systems

- F. Landscaping, Screening and Buffer Areas: As defined in Section 722(A) development shall “preserve the rural and agricultural character and ambiance of the community”. Natural features characteristic of the town’s rural and agricultural character shall be used in Landscaping and Screening to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

**Findings of Fact:** Testimony by applicant that natural features of the site will be preserved. Space



over garage has a new bathroom. Applicant to provide documentation that new bathroom is supported under the current Waste/water and potable water permit.

**Conclusions of Law:** Condition is met for F. Additional documentation requested for H.

**CONDITIONS:**

The application for development is **APPROVED**, with the following conditions, restrictions, requirements, limitations or specifications.

Note: The proposed dock shown on site plans is excluded from this review and decision. Applicant would need to re-apply for dock review and decision..

1. Except as otherwise required to accommodate the conditions of this decision, development will be executed in accordance with all exhibits and 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 accordance with the Ordinance.
2. Need letter of Approval from Fire Chief on the Fire Safety of the proposed third floor
3. Provide proof that new bathroom is supported on the current wastewater/potable water permit..

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:

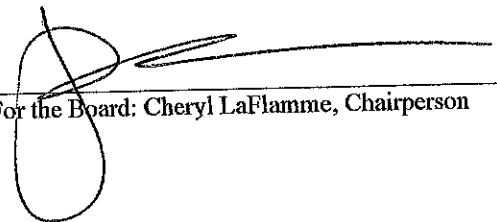
Diane Abate  
Cheryl LaFlamme  
Charles Foster  
Chrystal Holt

OPPOSED:

None

ABSTAINING:

None

  
\_\_\_\_\_  
For the Board: Cheryl LaFlamme, Chairperson

Date 12/13/2021

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.*