

**TOWN OF WILMINGTON
COVER SHEET
DRB FINDINGS OF FACT ATTACHED**

Zoning Permit Application Number:

2024-039

Date of First Hearing:

6.3.24

Public Hearing Notice published in the Deerfield Valley News on:

5.16.24

Notice was posted in three public places on:

5.15.24

A copy of the Notice was mailed to the applicant and abutters on:

5.15.24

Appeal period for this DRB Decision expires on:

8.16.24

Approved Permit (after two years) expires on:

7.18.26

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: **Charles and Brenda Waldron**

Owner/Applicant(s) Mailing Address: 25 Stonebrook Rd, Wilmington, VT 05363

Address of the subject property: 25 Stonebrook Rd, Wilmington, VT

Tax Map: parcel # 03.4.7

A copy of the request is filed in the office of the Board and is referred to as: #2024-039

Description of Case per Public Notice

Application # 2024-039: Owner: Charles and Brenda Waldron

Applicant proposes an After-the-fact swimming pool and viewing platform built in the special flood hazard area.

Applicable Code Sections:

Article II- Sections: 221, 222, 223, 224, 226, 227, 271, 272

Article IV- Sections: 420, 424, 440, 450 C

Article VI- Sections: 601, 602, 603, 605, 606, 608, 609, 610, 620

Article VII- Sections: 710, 720, 721, 722, 730 B, G, I, L

Notice for a public hearing was published in the Valley News on: 5/16/2024

Notice was posted in three public places on: 5/15/2024

A copy of the notice was mailed to the applicant on: 5/15/2024

A copy of the notice was mailed to the abutters on: 5/15/2024

Appeal period for this Case expires on: 8/16/2024

Approval expires on: 7/16/2026

Date of Hearing(s): 3 June 2024, Site Visit- 11 June 2024, Continuation- 1 July 2024

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

Charles Waldron, Applicant

EXHIBITS

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

1. Town of Wilmington Cover Sheet
2. Notice of Hearing
3. Application for DRB Review (5 pages)
4. Parcel map with drawings of pool and deck

5. Parcel map with flood zone overlay
6. Copy of Email from Ned Swanberg, Central Vermont Floodplain Manager, dated 5/10/2024 (2 pages)
7. Images of pool and viewing deck
8. Listers data for 25 Stonebrook Rd (2 pages)
9. Abutter List and postage date for notice mailing (6 pages)

SYNOPSIS

Applicant proposes an after-the-fact swimming pool and viewing platform built in the special flood hazard area.

ARTICLE II: ADMINISTRATIVE PROCEDURES

Section 221 The Role of the Development Review Board

Section 222 Land Development and Uses Requiring Development Review Board Written Decision and Approval

Section 223 Development Review Board Site Plan and Design Review

Section 224 Development Review Board Site Plan and Design Review Submission Requirements

Section 226 Development Review Board Decisions

Section 227 Plan Changes after Receiving a Development Review Board Decision

Section 271 Public Hearings

Section 272 Who May Attend and Be Heard at a Public Hearing

Finding of Facts: Sections noted outline administrative procedures, definitions, role of the DRB, and responsibility of the applicant. Application was received containing all necessary documents at the time of the hearing. Applicant testified they understand this article and did not have any questions.

Conclusion of Law: Article II is met.

ARTICLE IV: DISTRICTS & USES

Section 420 Uses

Section 424 Secondary Uses

Section 440 Districts and District Requirements

Section 450 C District Purposes and Descriptions- Residential District (RES)

Finding of Facts: Subject property is within the Residential district (Section 450 C). The property is identified as Tax Map parcel #03.4.7 per the Zoning Administrator. The primary use is currently residential. No additional information is needed regarding the district and the uses for this property.

Conclusion of Law: Article IV is met.

ARTICLE VI: FLOOD HAZARD DISTRICT, AN OVERLAY DISTRICT

Section 601 Statement of Purpose

Section 602 Lands to Which These Regulations Apply

Section 603 Development Permit Required

Section 605 Permitted Uses

Section 606 Conditional Uses

Section 608 Conditional Use Application Requirements

Section 609 Review Procedures

Section 610 Development Standards

Section 620 Flood Hazard Area Definitions

Findings of Fact: The applicant testified that the pool and viewing deck in this application had been on-site for several years due to the applicant not being aware that a permit was required, nor being aware of the restrictions on development in the floodways. During the site visit, measurements were taken to better understand what portions of the viewing deck were within the floodway, and at what height the pool electrical equipment was located. In communications with the Central Vermont Floodplain Manager Ned Swanberg, he indicated that the measurements for determining the start of the floodway shall begin at the corner of the home, which is an unmoving and reliable measurement point. He is quoted, "To avoid the Floodway – the deck should not extend beyond 134 feet from the corner of the house. Further from the Floodway would be better." With regard to the electrical equipment for the pool, measurements indicated that the equipment was in fact raised, and nearly at the required 2 feet above grade.

Conclusions of Law: Article VI is CONDITIONALLY met- see conditions for specifics.

ARTICLE VII: STANDARDS

Section 710 Use Performance Standards

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

SECTION 710: USE PERFORMANCE STANDARDS

Vibration, Noise, Injurious or Noxious Practices: Continuous, permanent, ongoing or frequent noise or vibration in excess of that of a normal conversation must not exist at the property line. Recurring periodic noise or vibration 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. No operations or Use shall create electromagnetic, liquid or solid refuse or waste, heat, cold, dampness, explosive, fire, glare, or other hazard which may cause injury or damage to human or animal health, vegetation, or property.

Findings of Fact: Applicant testifies that neither the viewing deck nor the pool will create any vibration, noise, injurious or noxious practice. There was no evidence to suggest otherwise based on the application and the testimony.

Conclusions of Law: This Use Performance Standard is met.

SECTIONS 721: GENERAL STANDARDS

The proposed use shall protect against adverse effect on:

- 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: Applicant testified that the general standards of section 721 would not be adversely affected by their pool or viewing deck. There is no evidence available at the time of the hearing to suggest otherwise.

Conclusions of Law: Section 721 is met.

SECTION 730: CONDITIONAL USE – SPECIFIC STANDARDS

B. Safety: Shall minimize physical hazards where there are potential safety hazards.

Findings of Fact: The application does not appear to present any specific safety hazards outside of the floodway hazards, which are reviewed below in section L.

Conclusions of Law: This Use Performance Standard does not apply.

G. Land and Water Management:

Findings of Fact: The application does not adversely affect land or water management outside of the floodway hazards, which are reviewed below in section L.

Conclusions of Law: This Use Performance Standard does not apply.

I. Natural Resources and Features:

Findings of Fact: The application does not adversely affect natural resources or features beyond the floodway hazard, which is reviewed below in section L.

Conclusions of Law: This Use Performance Standard does not apply.

L. Flood Hazard Protection:

Findings of Fact: The application for the existing viewing deck and pool does not meet the requirements of the State of Vermont due to structures being within the designated floodway. Based on communication with the Central Vermont Floodplain Manager, the viewing deck cannot extend beyond 134 feet from the corner of the house in order to be in compliance. Additionally, the electrical components of the pool need to be raised to two (2) feet above the grade. If these criteria are met, this flood hazard protection standard will be met.

Conclusions of Law: This Use Performance Standard is **CONDITIONALLY** 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 and the testimony provided. Any changes to the plans will require administrative approval from the Zoning Administrator and/or a review by the

- Development Review Board, in conformance with the ordinance.
2. In order to comply with Article VI requirements, and per the language of the Central Vermont Floodplain Manager Ned Swanberg, "to avoid the floodway, the viewing deck should not extend beyond 134 feet from the corner of the house. Further from the floodway would be better."
 3. In order to comply with Article VI, and per the language of the Central Vermont Floodplain Manager Ned Swanberg, "any electrical or mechanical elements related to the pool should be elevated above the flood level of approximately 1562'NAVD88, or approximately two feet above grade".

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:

Cheryl LaFlamme
Chrystal Holt
Diane Abate
John Gannon

OPPOSED:

None

ABSTAINING:

None



For the Board: Cheryl LaFlamme, Chairperson

Date: 7/16/2024

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.