

TOWN OF WILMINGTON
COVER SHEET
DRB FINDINGS OF FACT ATTACHED

Kempin
44 Upper Howes Rd.
Setback

Zoning Permit Application Number:

2024-266

Date of First Hearing:

11.18.24

Public Hearing Notice published in the Deerfield Valley News on:

10.25.24

Notice was posted in three public places on:

10.22.24

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

10.22.24

Appeal period for this DRB Decision expires on:

12.21.24

Approved Permit (after two years) expires on:

11.21.26

**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: **Jeff Kempin**

Owner/Applicant(s) Mailing Address: PO Box 1392, West Dover VT 05356

Address of the subject property: **47 Upper Howes Way, Wilmington, VT**

Tax Map: parcel # **CH-A-023**

A copy of the request is filed in the office of the Board and is referred to as: **#2024-266**

Description of Case per Public Notice

Application # **2024-266**: Owner: Jeff Kempin, Agent: Thomas Ferrazza

Applicant proposes a setback variance for a previously permitted project.

Applicable Code Sections:

Article II- Sections: 221, 222, 223, 224, 226, 227, 235, 271, 272

Article IV- Sections: 440, 444, 450 C

Article VII- Sections: 710, 720, 721, 722

Notice for a public hearing was published in the Valley News on: **10/25/2024**

Notice was posted in three public places on: **10/22/2024**

A copy of the notice was mailed to the applicant on: **10/22/2024**

A copy of the notice was mailed to the abutters on: **10/22/2024**

Appeal period for this Case expires on: _____12/20/2024_____

Approval expires on: ___11/20/2026_____

Date of Hearing(s): 18 November 2024

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

Jeff Kempin, Applicant

Thomas Ferrazza, Agent

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 (3 pages)
4. Survey Map dated 27 Sept 2024; setbacks marked
5. Abutter List and postage date for notice mailing

SYNOPSIS

Applicant proposes a setback variance for a previously permitted project.

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 235 Variances Granted by the Development Review Board for Other than Renewable Energy Resources Structures

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 that per Section 235, the variance request was necessary due to the lot conditions and the feasibility for house placement. Additionally, the variance requested represents the minimal variance needed, as well as the variance occurring on the rear setback which abuts to Chimney Hill Homeowners Association Common Land. Finally, the variance requested does not appear to alter the essential character of the neighborhood or district, and was also approved by the Chimney Hill Homeowners Association per the testimony of the applicant. It is the opinion of this DRB that the variance requested meets the intent of Section 235.

Conclusion of Law: Article II is met.

ARTICLE IV: DISTRICTS & USES

Section 440 Districts and District Requirements

Section 444 Calculation of Lot Dimensions and Setbacks

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 #CH-A-023 per the Zoning Administrator. The primary use is currently residential. The applicant is aware of the guidelines around determining the setbacks for the property. No additional information is needed regarding the district and the uses for this property.

Conclusion of Law: Article IV is met.

ARTICLE VII: STANDARDS

Section 710 Use Performance Standards

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

Section 721 Conditional Use- General Standards

Section 722 Conditional Use- Preserving the Character of the Town

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 the variance will not create vibration, noise, or injurious or noxious practices that violates this section. 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 are upheld by the granting of this variance, and no undue adverse effect is apparent. The variance requested is on the rear of the property, which abuts the Chimney Hill Homeowners Association common land per the applicants testimony. This land is designated to remain common land and therefore does not impact any personal property. The side and front setbacks remain in compliance with the zoning ordinance. There is no evidence available at the time of the hearing to suggest otherwise.

Conclusions of Law: Section 721 is met.

SECTIONS 722: Conditional Use- Preserving the Character of Town

Land development and Uses in all Districts shall preserve the character of town consistent with its rural and agricultural heritage, conforming to the following:

- A. Preservation of the Town's Character
- B. Economic Development Contributing to the Character of the Town
- C. Development Consistent with the Rural, Agricultural, and Historic Nature of the Town
- D. Formula Businesses
- E. Maximum Square Footage for Retail
- F. Building Scale Conformity
- G. Utility Placement

Findings of Fact: Applicant testified that the variance will comply with land development and uses per this section. There is no evidence available at the time of the hearing to suggest otherwise.
Conclusions of Law: Section 722 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 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.

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:

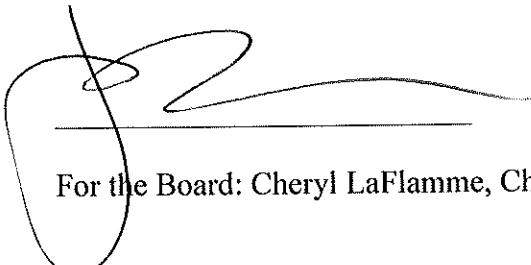
Cheryl LaFlamme
Chrystal Holt
John Gannon

OPPOSED:

None

ABSTAINING:

None



For the Board: Cheryl LaFlamme, Chairperson

Date: 11/20/2024

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.