

TOWN OF WILMINGTON

DRB Case COVER SHEET

DRB FINDINGS OF FACT to be ATTACHED

Applicant DIANE CAVITT
Address/Lot 92 WEST LAKE RD
22-21-013

Zoning Permit Application Number:

2025-159

Date of First Hearing:

10/06/2025

Public Hearing Notice published in the Deerfield Valley News on:

9/19/2025

Notice was posted in three public places on:

9/16/2025

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

9/16/2025

Added to paper packet after processing:

- P-Poster Posted
- Abutter List DRB warning
- Packet sent to DRB

Appeal period for this DRB Decision expires on:

11/15/2025

Approved Permit (after two years) expires on:

10/15/2027

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: **Diane Cavitt**

Owner/Applicant(s) Mailing Address: 92 West Lake Road, Wilmington, VT 05363

Address of the subject property: 92 West Lake Road, Wilmington, VT

Tax Map: parcel # 22-21-013

A copy of the request is filed in the office of the Board and is referred to as: #2025-159

Description of Case per Public Notice

Application # 2025-159:

Owner: Diane Cavitt

Agent: Eric Craven

Applicant proposes construction of a 6'x8' addition to an existing, nonconforming structure that does not meet the setback requirements and is mostly within the setback of the Town's right-of-way in the Residential District.

Applicable Code Sections:

Article II- Sections: 221, 222, 223, 224, 226, 227, 230, 232, 234, 271, 272

Article IV- Sections: 440, 444 & 450 C

Article VII- Sections: 706, 710, 720, 721, 722, 730 K

Notice for a public hearing was published in the Valley News on: 9/19/2025

Notice was posted in three public places on: 9/16/2025

A copy of the notice was mailed to the applicant on: 9/16/2025

A copy of the notice was mailed to the abutters on: 9/16/2025

Appeal period for this Case expires on: 11/15/2025

Approval expires on: 10/15/2027

Date of Hearing: October 6, 2025

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

Diane Cavitt
Eric Craven
Marshall Dix, Town of Wilmington Road Supervisor

EXHIBITS

1. Town of Wilmington Cover Sheet
2. Zoning Permit Staff Report
3. Warning
4. Application for DRB Review (3 pages)
5. Proposed Site Plan for 92 West Lake Road (2 pages)
6. Emails to and from Eric Craven re: Shoreland Protection (3 pages)
7. Email to and from Marshall Dix, Town of Wilmington Road Supervisor re: impact of proposed addition on Town's right-of-way
8. Abutter List and postage date for notice mailing

SYNOPSIS

Applicant proposes a 6'x8' addition to a nonconforming structure in the Residential District.

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 229 Dimensional and Sign Waivers Granted by the Development Review Board

Section 230 Structural Enlargements Not Requiring a Dimensional Waiver from the Development Review Board

Section 232 Criteria for Obtaining a Dimensional Waiver from the Development Review Board

Section 234 Dimension and Sign Waiver Application and Review Process of the Development Review Board

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 to proceed with the hearing. Agent testified that he understood this article and did not have any questions.

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 # 22-21-013 per the Zoning Administrator. The primary use is currently residential. There is no proposed change of use. 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 706 Nonconforming Structures on Developed Land/Lot

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 730 K Shoreland Protection

Section 706 Nonconforming Structures on Developed Land/Lot

- A. Developed Land/Lot is any Land, Lot or parcel which includes "the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure; the demolition, destruction, or razing of a structure, whether intentional or unintentional; any change

in the Use of any building or other structure, Land, or Use; the subdivision of a parcel into two (2) or more parcels; any mining, landfill, or excavation that increases peak off-site flow; and any water impoundment such as lakes and ponds", (see Definitions Land Development, Lot Development).

- 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.
- C. In a Development Review Board hearing where there is question as to whether a lot has been previously developed, the burden of proof lies with the applicant. This burden may be met through dated photographs, expert testimony, or the provision of Town land records or Grand List of the Town of Wilmington records back to January 26, 1968 (the time of the first Wilmington Zoning Ordinance) or the time when the lot/land was established or created, whichever is later.
- 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 § 442 of this Ordinance nor for Waivers under § 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 the change to the nonconforming element of the structure:
1. Remains within the footprint of the original nonconforming element or feature, including any overhangs or cantilevering, or
 2. Does not increase the Degree of Nonconformity, except that when alteration, renovation, or change is for the purpose of compliance with environmental, safety, health, or energy codes the change is allowed to increase the degree of nonconformity, but only to the minimum necessary to achieve compliance.
- F. A Nonconforming Structure which is demolished or destroyed unintentionally may, with a Permit from the Zoning Administrator, be restored to its earlier state, matching all prior dimensions including but not limited to roof pitch, height, footprint, etc., provided the reconstruction commences within two (2) years of the date of loss. Reconstruction seeking any changes to prior dimensions is subject to the terms of this Section and requires a written decision and approval from the Development Review Board.
- G. Determining Footprint of Original Structure: evidence of the footprint of the original Nonconforming Structure shall be clearly established and maintained by the property owner seeking to rebuild within the footprint of the original Nonconforming Structure. The burden of proof as to the location and dimensions of the original structure remains with the property owner seeking a Permit for such a change. For owners failing to clearly establish and maintain evidence of the footprint and dimensions of the original structure on the lot, the applicant shall provide evidence of the prior structure's dimensions and photos of the prior structure's location in relation to the lot or such other documentation as may demonstrate the location and dimensions of the original footprint of the structure.
- H. Measuring Degree of Nonconformity: if a house currently encroaches ten (10) feet into a setback and an attached porch encroaches fifteen (15) feet into the same setback, there is an existing nonconformity of 15 feet. The degree of nonconformity is measured from the greatest degree of nonconformity for that structure, or in this case 15 feet. Additions that do not exceed the greatest current nonconformity would not be considered an increase in the degree of nonconformity.

Using the above example; the porch with the 15-foot encroachment could be extended so long as it stays less than or equal to the 15 feet of nonconformity, or the 10-foot setback nonconformity of the house could be expanded another 5 feet, up to the 15-foot existing nonconformity, without increasing the degree of nonconformity. No Waiver would be required as the structure is not increasing the degree of nonconformity.

Finding of Fact: The subject property contains a nonconforming structure. Applicant has requested that the nonconforming structure be modified to add a 6'x8' addition. Agent testified that the height of

the proposed addition will not exceed 30 feet. Agent further testified that the addition remains within footprint of the original nonconforming structure since it would go over and consume an existing patio and that no overhang on the proposed addition would be outside the existing footprint of the existing patio.

Conclusions of Law: A nonconforming structure may be modified within the guidelines of Section 706 with the prior written decision of the Development Review Board. The proposed addition to the nonconforming structure does not exceed thirty (30) feet to the highest point of the ridgeline, remains within the original footprint of the nonconforming structure and does not increase the Degree of Nonconformity. This section 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: Agent testified that there will be no continuous, permanent, ongoing or frequent vibrations.

Conclusions of Law: This section 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 9 PM and 7 AM and does not significantly detract from or diminish other property's allowed use or land development.

Findings of fact: Agent testified that there would be no noise in violation of this section.

Conclusions of Law: This section is met.

C. Air Emissions for Commercial Operations: There shall be no emission of dust, ash, smoke or other particulate matter that can:

1. Cause damage to human or animal health, vegetation or property by reason of concentration or toxicity,
2. Contaminate the property or beyond the property boundaries.
3. Have solid or liquid particulates in concentrations exceeding state standards.
4. Cause odorous matter in quantities as to be offensive.

Findings of Fact: Agent testified that there would be no emission of dust, ash, smoke or other particulate matter.

Conclusions of Law: This section is met.

D. Injurious or Noxious Practices: No operations or use shall create electromagnetic, liquid or solid refuse or waste, heat, cold, dampness, explosive, fire, glare or other hazard which will cause injury or damage to human or animal health, vegetation or property.

Findings of Fact: Agent testified that there would be no injurious or noxious practices.

Conclusions of Law: This section 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: Agent testified that the general standards of section 721 would not be adversely affected by the proposed addition. In an email to the Zoning Administrator, the Town of Wilmington Road Supervisor confirmed that he was okay with the addition since it will not be coming any closer to the road than the existing nonconforming structure.

Conclusions of Law: Section 721 is met.

SECTION 730: CONDITIONAL USE – SPECIFIC STANDARDS

K. Shoreland Protection

Pursuant to 24 VSA § 4414 (13) all development shall be in conformity with the Shoreland Protection Act (applying to all development within 250 feet of a body of water greater than or equal to 10 acres).

Finding of Fact: The property is located within the protected Shoreland Area of Lake Raponda. Agent emailed the Vermont Agency of Natural Resources about the proposed addition and was informed that “if the expansion will be located within an already existing impervious surface footprint, then there would be no expansion to that footprint to trigger the need for a Shoreland approval.”

Conclusion of Law: The Shoreland Protection Act is inapplicable because there will be no creation of a new impervious surface. Section 730 K 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.
2. The proposed addition must remain within the footprint of the existing nonconforming structure and not create any new impervious surface.

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:

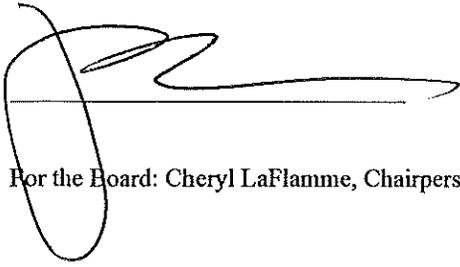
Cheryl LaFlamme
Diane Abate
Charlie Foster
John Gannon
Chrystal Holt

OPPOSED:

None

ABSTAINING:

None



Date: 10/15/2025

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).

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.
