**TOWN OF SOUTH HERO, VERMONT**

**DEVELOPMENT REVIEW BOARD**

**DECISION DATED June 22, 2022**

**APPLICANT**

**Name: Ken Kowalewitz and Jenn Bunker**

**Address: 23 Kibbe Farm Rd., South Hero, VT 05486**

**LANDOWNER**

**Name: Same**

**APPLICATION**

**Type: Request for Setback Waiver**

**Number: 22-67-KF023**

**PROPERTY**

**Location: 23 Kibbe Farm Rd.**

**Hearing Date: May 25, 2022**

Ken Kowalewitz and Jenn Bunker submitted an application on April 26, 2022 requesting a setback waiver per Sec. 305 to add a second floor to a pre-existing, non-conforming detached garage at 23 Kibbe Farm Rd. Per Section 805 of the South Hero Development Regulations, a warning for the public hearing appeared in the May 4, 2022 issue of the Islander and was posted in the Town Office, the Post Office, and the Town Library, and abutters to the property were notified. A hearing was held on May 25, 2022. A list of those present and participating in the hearings is included in the minutes.

**During the course of the hearing, the following exhibits were submitted:**

1. Town of South Hero Development Regulations, effective March 30, 2020
2. Setback Waiver Application, dated and rec’d April 26, 2022.
3. Site Map of Kowalewitz/Bunker lot with distances to the lake and south boundary, no date; rec’d April 26, 2022.
4. Elevations, floor plans, perspective views, and building sections by Weiman Lamphere Architects, dated April 4, 2022; rec’d April 26, 2022.
5. Applicant’s narrative, dated and received April 28, 2022.
6. Photographs of existing structure to be replaced, pages 1-3 from email dated April 26, 2022.
7. Warning ad, Abutters’ Notice, and Hearing Letter for May 25, 2022 DRB Setback Waiver Review.
8. Staff report for May 25, 2022 DRB hearing.
9. Draft minutes from the May 25, 2022 setback waiver hearing.

Based on the applications, supporting documents, and testimony of Ken Kowalewitz and Jenn Bunker, **the Development Review Board makes the following Findings and enters the following decision:**

**Findings:**

1. 23 Kibbe Farm Rd. is a 1.38-acre lakefront lot on Keeler Bay. The lot is in the Shoreland Zoning District.
2. The lot includes a dwelling and a 24’x24’ two-bay garage. The garage is attached to a pre-existing, non-conforming (to the south boundary) barn by a breezeway. The garage and dwelling are both non-conforming to the lake. Both structures are approx. 40 feet above the water.
3. The single-story garage is 15 feet from the south boundary and extends 5 feet into the 75-ft. setback from the lake. The building has no eaves on the south side.
4. The garage doors are on the north side of the structure. A retaining wall north of the garage drops toward the house. The house sits lower on the lot than the garage.
5. The Applicant proposes to replace the current garage with a 2-story garage on the same footprint on the west and north sides. The architectural drawings of the replacement garage show the eaves extending into the 15-ft. setback to the south boundary.
6. The second floor will add storage space (there is little storage space in the 1905 home—no basement).
7. The new structure will expand into the conforming breezeway area, adding stairway access to the second floors of the garage and barn. An additional expansion, with a third garage bay, will extend north from the existing barn into conforming space.
8. The proposed second floor of the replacement garage will add 120sf of non-conforming space, of which 83sf of useable space will be beneath the slope of the roof.
9. The garage/barn is out of sight from all directions, including the lake due to tree coverage.
10. Abutting neighbors were notified of the proposal and there were no complaints.
11. The Applicant asked that the Board consider adding the eave on the south side of the replacement garage to the waiver request.

DRB Chair Tim Maxham closed the hearing on May 25, 2022.

**Conclusions of Law:**

1. Per Section 305 (Setback Waiver), structures in the Village and Shoreland Zoning Districts are eligible for setback waivers.

**On June 22, 2022, S. Corbin moved to approve the application, with the findings of fact listed and with the following Conditions; N. Hayward second.**  **Whereas, Final Approval was granted to the application with Conditions,** with the following people voting in the affirmative: T. Maxham; N. Hayward; S. Corbin; E. Reid; and J. Brightwell.

**Conditions:**

1. Applicants shall comply with all evidence as presented at the hearing or as amended by this decision.
2. The Board grants a waiver to add a second floor onto the non-conforming garage within the existing footprint but requires that the building, including the eaves of the new structure, not encroach on the south setback.
3. The Town of South Hero’s responsibilities are limited to ensuring compliance with the approvals and permits issued by the Town of South Hero. The Town accepts no responsibility for compliance with the conditions of any permits or approvals issued by any other entity. The Town of South Hero will not be liable for the failure of the applicants to carry out their duties and responsibilities.

  **Dated: June 22, 2022**

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 **For the Development Review Board**

## APPEAL RIGHTS

 Any appeal of this decision must be filed with the Superior Court, Environmental Division (located at 2418 Airport Road, Suite 1, Barre, VT 05641-8701) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. §1431 and the 5% surcharge required by 32 V.S.A. §1434a(a). A copy of this appeal must be filed with the Zoning Administrator or the Town Clerk within thirty (30) days from the date of issuance.