## TOWN OF SOUTH HERO, VERMONT

**DEVELOPMENT REVIEW BOARD**

**DECISION DATED April 24, 2024**

**APPLICANT**

**Name: Eben Hill**

**Address: 57 Ferris St., St. Albans, VT 05478**

**LANDOWNER**

**Name: Seganku A Vermont Partnership**

**APPLICATION**

**Type: Setback Waiver for a Replacement Accessory Structure within the Lake Setback**

**Number: 24-57-KF049**

**PROPERTY**

**Location: 49 Kibbe Farm Rd.**

**Hearing Date: April 10, 2024**

Eben Hill, representing Seganku A Vermont Partnership, submitted an application on February 29, 2024, requesting a setback waiver to replace a pre-existing, non-conforming lakefront cottage in a location within the lake setback at 49 Kibbe Farm Rd. Per Section 805 of the South Hero Development Regulations, a warning for the public hearing appeared in the March 20, 2024 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. The hearing was held on April 10, 2024. The Applicant presented the application to the Board. A list of those attending 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 September 13, 2021
2. Site Plan by Buermann Engineering, dated October 12, 2023; rec’d February 22, 2024.
3. 7 Photographs of existing structures and lot topography; rec’d February 22, 2024.
4. Shoreland Protection Permit #4172-SP, dated February 16, 2024; rec’d February 22, 2024.
5. Warning Ad, Abutters’ Notice, and Hearing Letter for April 10, 2024 DRB hearing.
6. Staff report by Zoning Administrator for April 10, 2024 hearing.
7. Minutes from the April 10, 2024 DRB hearing.

Based on the application, supporting documents, and testimony of Eben Hill, **the Development Review Board makes the following Findings and enters the following decision:**

**Findings:**

1. 49 Kibbe Farm Rd. is a 0.87-acre lot on Keeler Bay. The property is in the Shoreland zoning district. Development is only on the west (lake) side of the road. A large hay field stretches along the entire east side of Kibbe Farm Rd.
2. The 155-ft. deep lot has a steep slope from the road to the lake. There are 4 camp structures – a larger camp dwelling and 3 smaller cottages -- in addition to 2 storage sheds, a deck, and lake access stairs. The elevation of the lot drops from 140 feet to approx. 108 feet at the top of the bank above the lake. The lot is partially wooded with mature trees and has several retaining walls scattered within the slope.
3. The Applicant proposes to remove an existing cottage (identified as Cottage #2 on the site plan) that has become unsafe due to erosion beneath and along the bank above the lake. The cottage has not been used in 2 years because of the unsafe conditions.
4. The cottage is approx. 27 feet from the mean level of the lake, within the 75-ft. lake setback. The proposed location for a replacement cottage is 20 feet to the east and 2 feet north of the current location. This will minimize the need to remove several existing trees and will avoid steeper slopes and retaining walls but will still be within the lake setback.
5. The existing 14’x11’ cottage has a deck on 2 sides, further increasing the footprint of the structure. The replacement cottage will replicate the existing one but will not include the deck.
6. The replacement cottage will no longer be connected to a shared septic system with the other 2 cottages.
7. After the removal of the existing cottage, the Applicant intends to plant native vegetation to mitigate additional erosion. The Applicant’s Shoreland Protection permit includes adding rip rap along the shoreline to control erosion. This application is for relocating Cottage #2 only.

**Conclusions of Law:**

1. Per Table 2.1 (Allowed Uses), seasonal dwellings are permitted in the Shoreland zoning district.
2. Per Section 305 (Setback Waivers), structures in the Shoreland zoning district are eligible for setback waivers.
3. Per Section 305.D. (Review Standards):
   * + 1. (Least Deviation) The Applicant proposes to replace an unsafe seasonal lakefront cottage that sits on an eroding bank to a location further back from the water but still within the lake setback. The 11’x14’ replacement cottage will not include the added deck on the current structure, reducing the footprint and degree of non-conformity of the original cottage.
       2. (Undue Adverse Effect) The proposed replacement cottage will not represent an undue adverse effect on the character of an area that already includes numerous seasonal cottages and homes. The Board received no written or verbal concerns or complaints about the proposal.
       3. (Screening) Trees along the waterfront and throughout the lot create natural screening from abutting properties. No additional screening is necessary.

**On April 24, 2024, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ moved to approve the application, with the findings of fact listed and with the following Conditions: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ second.**  **Whereas Final Approval was granted to the application with Conditions,** with the following people voting in the affirmative: T. Maxham; L. Kilcoyne; M. Welch; G. Hunt; N. Hayward, T. Mullen; Ellie Reid; and J. Brightwell.

**Conditions:**

1. Applicants shall comply with all evidence as presented at the hearing or as amended by this decision.
2. During construction, Applicant shall comply with the standards of Sec. 606.A.2 (Stormwater Management and Erosion Control) of the South Hero Development Regulations.
3. It will be the Applicants’ responsibility to obtain all required State permits and submit copies to the Zoning Administrator.
4. 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: April 24, 2024**

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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) 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.*