

**TOWN OF SOUTH HERO, VERMONT  
DEVELOPMENT REVIEW BOARD  
DECISION DATED September 11, 2024**

**APPLICANTS**

**Names:** Mike and Michele Gammal

**Address:** 99 Wally's Point Rd./PO Box 95, South Hero, VT 05486

**LANDOWNER**

**Name:** Same

**APPLICATION**

**Type:** Site Plan Amendment

**Number:** 25-05-PB099

**PROPERTY**

**Location:** 99 Phoebe Lane

**Hearing Date:** August 28, 2024

Mike and Michele Gammal, submitted an application on July 25, 2024, requesting a site plan amendment to DRB decision #21-59-RT456 (PUD) related to height and building envelope for the home built on exclusive use zone #6 (99 Phoebe Lane). Per Section 805 of the South Hero Development Regulations, a warning for the public hearing appeared in the August 8, 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 August 28, 2024. The Applicants presented to the Board. A list of those attending and participating in the hearing is included in the minutes.

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

- South Hero Development Regulations, last updated January 1, 2024.
- Application for Final Site Plan Review, dated and rec'd July 25, 2024.

- Development Review Board Decision #21-59-RT456-PUD, dated March 23, 2023
- Lot 2 Site Plan – Keeler Bay Associates, LLC by Buermann Engineering, Sheet 3 of 14, dated June 16, 2020.
- South Hero Building Permit #24-36-PB099, including footprint dimensions, dated November 2, 2023
- Lot #2 Site Plan by Buermann Engineering, dated June 16, 2020.
- Water and Wastewater Plan Keeler Bay Campground and Marina, by Buermann Engineering, dated March 7, 2012.
- Surveyor certification for structure height and footprint, no surveyor name; no date.
- Email from Mike Gammal, dated August 20, 2024.
- Warning Ad, Abutters' Notice, and Hearing Letter for August 28, 2024 DRB hearing.
- Staff report by Zoning Administrator for August 28, 2024 hearing.
- As-Built Survey "On the Lake" by Button Professional Land Surveyors, dated August 26, 2024; entered into the record at the hearing as Exhibit #1.
- Vice-Chair Doug Patterson's elevation calculations, entered into the record at the hearing as Exhibit #2.
- Draft minutes from the August 28, 2024 hearing.

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

**Findings:**

1. 99 Phoebe Lane (previous address 456 US RT 2, Exclusive Use Zone [building lot] #6) is an 80-ft. by 74-ft. residential building lot in a Planned Unit Development originally reviewed by the DRB as application #21-59-RT456-PUD and approved on July 28, 2021. The Board approved a 9-unit Planned Unit Development, consisting of 8 single family homes and an existing residential structure proposed for future commercial use. That decision was revised to clarify language in a decision dated March 23, 2023. The revision did not change the dimensions of any of the building lots. The property is in the Keeler Bay Village zoning district.
2. "Lot #2 Site Plan by Buermann Engineering," dated June 16, 2020, establishes the pre-construction average natural grade from which all elevations shall be measured.
3. Each building lot in the PUD was approved with a 5-ft. setback. The building envelope dimensions shown on the site plan for lot #6 are 70-ft. by 64-ft.
4. Condition #6 of decision 21-59-RT456-PUD limited the height of future homes on Lots 6 and 7 to no higher than 25 feet, measured from average natural grade.

5. Building permit application #24-36-PB099 for a 3BR home at 99 Phoebe Lane was approved by the zoning administrator on November 6, 2023, and became effective on November 21, 2023. The dimensions of the home, as stated on the permit application, were 58 feet in length and 55 feet in width. The height was noted to be 25 feet. The ZA included in the application findings the requirement that the height would be measured from natural grade, and the applicants would provide certification of the finished height.
6. Based on the 2020 Buermann site plan, the average natural grade is calculated to be 111.4 feet. The Button survey showed the elevation at the highest point of the roof to be 134.72 feet. Therefore, the home's height does not exceed 25 feet above average natural grade.
7. The home conforms to the north and south setbacks.
8. The structure's overhang exceeds the west setback by approximately 12 inches. The Applicants asked that the setback be reduced from 5 feet to 4 feet on the west side.
9. The current stairs to the entry porch exceed the setback on the west side. The Applicant stated these stairs will be moved to the south side of the porch, so they will be within the conforming building area.
10. The structure exceeds the east setback by 25.6 inches. The Applicants asked that the setback on the east side be reduced from 5 feet to 2 feet.

**Conclusions of Law:**

- A. The structure meets the height limit imposed by Condition #6 of DRB decision #21-59-RT456-PUD per the certified survey by Button Professional Land Surveyors.
- B. The structure exceeds the building envelope on the east and west sides of Lot 6, per the certified survey by Button Professional Land Surveyors.
- C. The structure exceeds the dimensions stated in South Hero Zoning/Building Application #24-36-PB099.
- D. The Board is unable to provide a waiver or variance since the Applicant created the hardship.

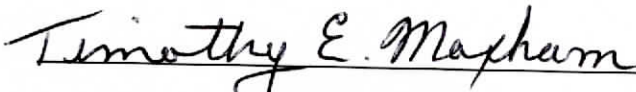
**On September 11, 2024, J. Brightwell moved to approve the application, with the findings of fact listed and with the following Conditions; D. Patterson second. Whereas Final Approval was granted to the application with Conditions, with the**

following people voting in the affirmative: T. Maxham; D. Patterson; L. Kilcoyne; M. Welch; N. Hayward; G. Hunt; and J. Brightwell.

**Conditions:**

1. Applicants shall comply with all evidence as presented at the hearing or as amended by this decision.
2. The west setback will be reduced to 4 feet.
3. The east setback will be reduced to 2.5 feet.
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: September 11, 2024**



**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.*