

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: **Richard and Cheryl Rusin**

Owner/Applicant(s) Mailing Address: P.O. Box 1027, Wilmington, VT 05363

Address of the subject property: **380 Boyd Hill RD**

Tax Map: # 00901060400

A copy of the request is filed in the office of the Board and is referred to as: **#2016- 073**

**Description of Case per Public Notice:**

Application # 2016-073: Owner Richard and Cheryl Rusin. Application is being made for a Dimensional Waiver/Variance to construct a pole barn within the front setback. Residential zoning district: Sections 450 C (p5), 232 & 235; location 380 Boyd Hill Road.

Notice for a public hearing was published in the Valley News on: **October 6, 2016**

Notice was posted in three public places on: **October 6, 2016**

A copy of the notice was mailed to the applicant on: **October 6, 2017**

A copy of the notice was mailed to the abutters on: **October 6, 2016**

Public hearings were held on October 24, 2016

There was no Site Visit.

Action taken on this application may be appealed by anyone identified as an interested party, pursuant to Vermont Statutes Annotated. Said appeal shall be made to the Vermont Environmental Court.

**Appeal period for this Case expires on: December 30, 2016**

In addition to the Applicant/Agent the following persons, heard by the Board in connection with this request, were determined by the Board to be "interested personal: Copies of this decision have been mailed to those persons listed below.

None

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

None

## **EXHIBITS**

The following Exhibits were placed by the Applicant:

1. Application with abutter list and drawing of sign.
2. Applicants layout of current property and proposed barn.
3. Pictures of Pole Barn and land to be used.

## **SYNOPSIS**

The project consists of the construction of a 28' x 40" pole barn on 380 Boyd Hill Road, Wilmington, VT a town maintained dirt road.

The applicant is requesting a waiver or variance to the town road setback ordinance which states "Setback front (Min) 40' measured from the edge of the actual or proposed road right-of-way". The request is to allow a deviation to 15' from the 40' requirements.

The applicant believes that the deviation is necessary to allow best use and access to the pole barn. The proposed location is near the existing home on the site and will make use of the existing driveway by extending it to the new structure on a level plane.

The existing property has topography with a drop off slope of 25 to 30 degrees in most locations along the road frontage. The site location is the only level area near the home without having to perform extreme land excavation.

The use of the structure, barn, will be for storage facility to house owner's business equipment.

## **APPLICABLE DISTRICT**

**Finding of Fact:** Subject property is identified as Parcel ID# 00901060400 380 Boyd Hill Road Wilmington VT

**Conclusion of Law:** The Waiver request is located in an area that is residential

## **CRITERIA FOR OBTAINING A DIMENSIONAL OR USE WAIVER FROM THE DEVELOPMENT REVIEW BOARD**

The Development Review Board may grant a Waiver to a dimensional requirement other than density, or a use after assessing the criteria below:

A. The requested use of the property is reasonable and only possible if the DRB grants a Waiver.

**Finding of Fact:** The requested use of the property is to build a barn that will be set back 15 feet instead of the 40 feet required. It is possible to build the structure to meet the requirements of the Zoning Ordinance.

**Conclusion of Law:** This criteria is not met.

B. The Waiver is the minimum reduction in the dimensional requirement that will enable the reasonable use of the property.

**Findings of Fact:** The structure is to be set back 15 feet instead of 40 feet. It is possible to build a similar structure on the property which meets the requirements of the Zoning Ordinance.

**Conclusion of Law** the Board concludes that the applicant can find a way to build the structure to meet the 40 feet set back requirements. This criteria is not met.

C. The Waiver is for an addition to an existing Principal or Accessory Structure, and said addition does not increase the footprint of the building by more than five (5) percent, or by no more than two hundred (200) square feet, whichever is less.

**Finding of Fact:** Not Applicable

**Conclusion of Law:** Not Applicable

D. No front setback is reduced to less than two (2) feet except in HDRD where it may be zero setback.

**Findings of Fact:** Not applicable

**Conclusion of Law:** Not applicable

E. The proposed project will still conform to the Town Plan and the purpose of the Zoning district in which the land development is located.

**Findings of Fact:** The Board finds that the proposed structure and use conforms to the Town Plan and the purpose of the Residential District .

**Conclusion of Law:** This criteria has been met.

F. The proposed project will not have an undue adverse effect on the following:

- 1 The appropriate use or development of surrounding properties
- 2 The character and aesthetics of the neighborhood, as defined by the purpose of the district in which it is located.
- 3 Traffic patterns and circulation
4. Public health, safety and utility services
- 5 Water and wastewater services
- 6 The preservation of open space or scenic vistas

**Findings of Fact:** The Board finds that the project will not have an adverse effect on items 1 through 6 above.

**Conclusion of Law:** This criteria is met.

G. The need for a Waiver was not intentionally self-created by past decisions of the applicant.

**Findings of Fact** The proposed project has topography issues. The applicant could fill in dirt to level the lot to allow for project to be built with the 40 foot setback.

However, the applicant has decided to limit the amount of fill or other modifications and apply for a waiver.

**Conclusion of Law:** This criteria is not met.

H The Waiver does not create undue adverse impact on abutting or neighboring properties.

**Findings of Fact:** The project will not create an undue adverse impact on abutting or neighboring properties.

**Conclusion of Law:** This criteria is met.

I. The Waiver is not to the detriment of the public welfare, including the safety and maintenance of

the Town and State highways.

**Findings of Fact:** The project is not to the detriment of the public welfare to include the safety and maintenance of Town and State highways.

**Conclusion of Law:** This criteria is met.

**The Board Concludes:**

The application for a dimensional waiver is not granted by the Development Review Board in accordance with Section 232 as the Board finds that the applicant can meet the requirements of a 40 foot set back through additional means, not meeting the requirements of Section 232 A. B and G. Also the project fails to meet the variance requirements of Section 235 A and B.

NOT IN FAVOR of granting the APPROVAL FOR the above referenced application, with whatever restrictions, requirements, limitations or specifications and contained herein:

Fred Houston  
Tim Hall  
Peter Wallace  
Wendy Manners

OPPOSED:

None

ABSTAINING:

None

For the Board: Wendy Manners, Chairman

Date:December 1, 2016

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.

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.*