

Town of

Wilmington

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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: **John D Greene, et al, Agent Robert M. Fisher Esq.**

Owner/Applicant(s) Mailing Address: PO Box 108, Wilmington Vt 05363

Address of the subject property: **19 Merrill Drive**
Tax Map: # **012-22-051.0**

A copy of the request is filed in the office of the Board and is referred to as: # **2020-048**

Description of Case per Public Notice:

Application # **2020-048**: Owner: John D. Greene

Application is being made to consider the subdivision of 19 Merrill Drive known as Parcel ID #021-22-051.0 into two parcels and for a waiver for the 20' side yard setback on proposed lot #2 .

Applicable Wilmington Code Sections:

Article II -Sections: 212, 222, A 2 B, F, G, 224

Article III – 320, 330

Article IV –Sections 430; 440; 444, 450 C and E

Article VII –Sections 706 A , 707, 709

Notice for a public hearing was published in the Valley News on: **October 29, 2020**

Notice was posted in three public places on: **October 29, 2020**

A copy of the notice was mailed to the applicant on: **October 29, 2020**

A copy of the notice was mailed to the abutters on: **October 29, 2020**

Hearing Date: November 16, 2020

Appeal period for this Case expires on: December 19, 2020

Approval expires on: 11/18/2022

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

Property owner John D Greene seeks to subdivide 21.5-acre lot into two parcels. Lot 1: 1.2 acres with existing house on town sewer and Lot 2: 20+/- acres. Owner seeks a waiver from side yard setback for property line between existing barn on proposed Lot 2 and existing house on proposed Lot 1.

EXHIBITS

The following Exhibits were placed in evidence by the Applicant or their Agent:

1. Notice of Hearing
2. Application
3. Abutters Notice
4. Plot Plan showing proposed Lot 1 and partial Lot 2.

SYNOPSIS

The application proposes dividing lot into two lots and for a waiver on the 20' set back on proposed lot #2.

ARTICLE II: ADMINISTRATIVE PROCEDURES – Applicable Sections

Section 212: Land Development Zoning Permits Issued by the Zoning Administrator

Section 222 Land Development and Uses Require DRB Written Decision and Approval

A. Conditional Uses:

2. New or substantial Land Development as defined in this ordinance. – Defined as Subdivision of a lot into two or more parcels.

B. Nonconforming Structures, lots and or Uses: All Land Development and changes to Nonconforming Structures, Lots and/or Uses. To be 'nonconforming' means the condition was established legally in conformance with the ordinance in effect at the time it was created or was in existing prior to 1968 or a result of zoning admin error.

F. Waivers or Variances: Review Waiver or Variance request:

Per application and testimony Applicant seeks a waiver on the 20' side set back requirement for Lot 2.

G. Right of way Easements: Review right-of-way or easement for land development without frontage. Per application the only access to proposed lot #1 will be by 50 R.O.W. Merrill Drive as well as testimony of the applicant.

Section 223 Development Review Board Site Plan and Design Review

Section 224 Development Review Board Site Plan and Design Review Submission Requirements

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Findings of Fact: This standard has been met all exhibits have been received and verified.

Conclusions of Law: Article II is met.

ARTICLE IV: DISTRICTS & USES – Applicable Sections

Section 430 Nonconformities

Section 440 District and District Requirements

Section 444 Calculations of Lot Dimension and Setbacks

Section 445 Exceptions to Front Setback Requirements for Private Roads & Rights of way.

Section 450: C & E District Purposes and Descriptions; B) Village District (VIL)

Section 430: Nonconformities: A Nonconforming Structures, lots and or Uses: All Land Development and changes to Nonconforming Structures, Lots and/or Uses. To be ‘nonconforming’ means the condition was established legally in conformance with the ordinance in effect at the time it was created or was in existing prior to 1968 or a result of zoning admin error.

Finding of Facts: Subject Property existed prior to the Bylaw.

Conclusions of Law: Section 430 is met.

Section 440: Commercial/Residential Purpose: To encourage clustered economic development while preserving sprawl and roadside strip development.

Finding of Facts: Subject Property is in the Residential/Commercial District

Conclusions of Law: This proposed Use is a permitted in this district.

Section 444: Calculations and Lot Dimensions and Setbacks: All Lot dimensions including lot size and Structure setbacks shall be calculated from the edge of any applicable road or right-of-way. In the case of a property line that may include a road or right-of-way, that portion of the property within the road or right-of-way shall not be considered in any dimensional calculations.

Finding of Facts: Subject Property Lot #1 proposed property line runs partially through the right-of-way.

Conclusions of Law: Section 444 is met.

Section 445: Exception to Setback Requirements for Private Roads and Rights of way.

Front Setbacks from private roads and rights-of-way serving more than one house or commercial locations shall be a minimum of 20 feet from the edge of the right-of-way.

(Note a right-of-way line is not necessarily the edge of the traveled portion of the road.)

Finding of Facts: Subject Property existing house Lot #1 indicates a new property line at the Front which meets the 20’ exception.

Conclusions of Law: Applicant has demonstrated that there is a minimum of 20’ Front Set back on Lot 1. Section 445 is met.

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Section 450: District Purposes and Descriptions

C. Residential District (RES)

Finding of Facts: Subject Lot is in the Residential District and subdivision of land of five or fewer Lots is a permitted Use.

Site Criteria – Commercial/Residential District

Density Limits: Max 25% of Lot Coverage.

Existing & proposed Conforms per Applicant testimony.

Structures/Uses per Lot

Existing & proposed -Residential Lot #1 has one principal structure and 1 principal use. Appears to Conform per Applicant testimony.

Lot Size 1 Acre

Lot #1 & 2 meet Minimum Lot size is 1 acre.

Minimum Lot Frontage is 150ft

Per site plan - Lot #1 & 2 meet Minimum frontage.

Minimum Lot Depth is 150ft

Per site plan Lot #1 & 2 meet Minimum lot depth.

Structural Height 38' to height point of ridge line.

Conforms per Applicant testimony.

Setback-Front (min) 40 ft Measured from the edge of the actual or proposed road right-of-way

Refer to Section 445 – 20' setback permitted. Conforms per Applicant testimony.

Setback-side/Rear Min) 20' measured from property line.

Applicant seeks a waiver on Lot #2 for the 20' min side yard requirement – this condition is met on Lot #1.

Conclusions of Law: Per testimony of Applicant preexisting building closest to 9.5' setback existed prior to Bylaw. Section 450 is met.

ARTICLE VII: STANDARDS

Section 706 Non-Conforming 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*

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or other structure, the demolition, destruction, or razing of a structure, whither intentional or unintentional, any change in the use of any building or other structure, Land or Use..... the subdivision of a parcel into two or more parcels, any mining, landfill or excavation that increase peak off-site flow and any water impoundment such as lakes and ponds”.

Finding of Facts: This section applies to alterations to existing nonconforming structures.

Conclusions of Law: The existing house on Lot #1 has a 20’ frontage.

Section 707: Nonconforming Undeveloped Lots (Smalls Lots)

Findings of Fact: Both lots are at least one acre. This section applies to lots under the min. Based on applicants’ testimony - The proposed change of use will not provide continuous permanent or frequent vibration discernable at the property line.

Conclusions of Law: This is not applicable.

SECTION 709: Changes in Ownership of Nonconforming Structures, Lots or Uses.

A nonconforming Structure, Lot or Use that changes ownership will have the legal nonconforming status pass to the new owner as a “Grandfathered” nonconforming Structure, Lot or Use. All “Grandfathered” nonconformities of properties changing ownership will be subject to all of the provisions of Nonconforming Structures, Lots and/or Uses.

Findings of Fact: Owner has stated in application that they intend to sell Lot #1.

Conclusions of Law: Any nonconformance will be “Grandfathered’ and pass to the new owner.

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 1 – 4 and the testimony provided. Any changes to the plans will require an administrative approval from the Zoning Administrator and/or a review by the Development Review Board, in conformance with the ordinance.

The applicant is responsible for obtaining all state and federal permits.

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.

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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
Charles Foster
Mary Brady
Fred Houston

OPPOSED:

None

ABSTAINING:

None

Date: 11/19/2020

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.

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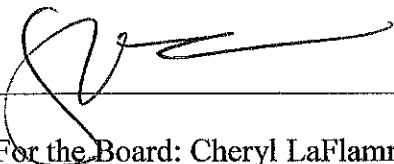
Cheryl LaFlamme
Charles Foster
Mary Brady
Fred Houston

OPPOSED:

None

ABSTAINING:

None



Date: 11/19/20

For the Board: Cheryl LaFlamme Chairperson

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