

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: **Shane Lopez**

Owner/Applicant(s) Mailing Address: PO Box 93, Wilmington VT

Address of the subject property: **175 Route 9 East**

Tax Map: **Parcel # 21-22-059.000**

A copy of the request is filed in the office of the Board and is referred to as: **#2021-013.**

Description of Case per Public Notice:

Application # **2021-013**: Owner: Shane Lopez

Application seeks a waiver from the commercial/residential zoning side yard setback requirement. **Applicant would like to build a 24 x 30 barn that would encroach 15' into the 20' side yard setback.**

Applicable Wilmington Code Section II, IV, VII.

Notice for a public hearing was published in the Valley News on: **May 20, 2021**

Notice was posted in three public places on: **May 18, 2021**

A copy of the notice was mailed to the applicant on: **May 18, 2021**

A copy of the notice was mailed to the abutters on: **May 18 2021.**

Hearing Date: June 7, 2021.

Appeal Period for the Case Expires on: August 18, 2021

Approval Expires on: July 18, 2023

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

EXHIBITS

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

1. Application (3 pages)
2. Notice of Hearing
3. Abutter's Notice & List
4. Photo partial site map

5. Photo partial site map
6. Photo partial site map
7. Photo images barn
8. Photo image barn

ARTICLE II: ADMINISTRATIVE PROCEDURES

Section 222: Land Development & uses requiring Development Review Board written Decision & Approval

Section 229: Dimension & Sign Waivers granted by the Development Review Board

Section 231: Criteria for Obtaining a Dimensional Waiver from the DRB

- A. The requested use of the property is reasonable and only possible if the Development Review Board grants a Waiver.
- B. The Waiver is the minimum reduction in the dimensional requirement that will enable the reasonable use of the property.
- C. The Waiver is for an addition to an existing principal or accessory building, 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.
- D. No front setback is reduced to less than two (2) feet (except in HDRD where it may be a zero (0) setback).
- 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.
- 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 capacity
 6. The preservation of open space or scenic vistas
- G. The need for a Waiver was not intentionally self-created by past decisions of the applicant.
- H. The Waiver does not create undue adverse impact on abutting or neighboring properties.
- I. The Waiver is not to the detriment of the public welfare, including the safety and maintenance of the Town and State highways.

Section 233 Dimensional and Sign Waiver Application and Review Process of the Development Review Board

- A. An application to the Development Review Board for a Dimensional, Use or Sign Waiver may be made as part of, and simultaneously with, an application for Conditional Use review or as a separate application if Conditional Use review is not otherwise required.
- B. Pursuant to 24 V.S.A. § 4460(e), the application shall come to the Development Review Board either as 1) an application from the property owner, 2) an Appeal of a decision made by the Zoning Administrator, or 3) as a referral from the Zoning Administrator.
- C. The application for a Waiver shall follow the same procedure used for Conditional Use review, approvals, and Appeals. (See Section 220 thru 236 of Article II)
- D. The Development Review Board shall assess the impact on abutters in deciding whether to grant the Waiver, or to place conditions on the Waiver approval.
- E. In granting a decision in favor of the Applicant, the Development Review Board may attach reasonable conditions including mitigation by design, screening, or other remedy.
- F. Any Waiver granted under this Section shall be limited to the specific property to which it has been granted. A Waiver on one property shall not be construed as a general guideline or standard for any other property.
- G. Waiver approvals shall expire if work is not substantially completed within twenty-four (24) months from the date they are approved. All work shall be substantially completed as shown on any approved plan before the expiration date. The Zoning Administrator shall be notified upon completion of the work. The DRB may grant an extension if an Application for an Extension is submitted prior to expiration of the Waiver.

Section 234: Dimensional Variances granted by the Development Review Board for Other than Renewable Energy Resource Structures

The Development Review Board shall hear and decide requests for Variances pursuant to 24 V.S.A. § 4469. The Development Review Board shall grant a Variance and render a decision in favor of the appellant only if all of the following facts are found and the findings are specified in its written decision:

- A. There are unique physical circumstances or conditions including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located,
- B. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a Variance is necessary to enable the reasonable use of the property,
- C. Unnecessary hardship has not been created by the appellant,
- D. The Variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare, and
- E. The Variance, if authorized, will represent the minimum Variance that will afford relief and will represent the least deviation possible from these regulations and from the Town Plan.

Finding of Facts: Applicant testified that building the barn within the setback is required for several practical reasons. Firstly, the location of the barn needs to provide adequate distance from the house to allow vehicles to pull into and out of the garage, which is located on the side and rear of the existing house structure. Additionally, because the barn will be used for equipment, and that will require the use of a trailer pulled behind a vehicle, adequate space is required to allow for said trailer to turn around and maneuver between the house and barn. Finally, the existence of a key property marker (Cherry Tree) which is clearly delineated on the house survey is a detriment if the barn is to be rotated or shifted closer to the home. Finally, the applicant testified that building the barn in the proposed location provides less risk because the subsurface contents are already known and manageable for excavation. The 50 foot easement to the rear of the barn also determines the proposed barn location.

Conclusions of Law: The property shape, location of easements and general layout options provide that the proposed encroachment of 15 feet into the setback is reasonable.

ARTICLE IV: DISTRICTS & USES

Section 400 Establishment of Zoning

Section 430: Nonconformities (NOT APPLICABLE)

Section 431: Changes to Legal Non-Conforming Structures, Lots & Uses. (NOT APPLICABLE)

Section 440: District and District Requirements

This section provides a description of:

- A. The purpose of the district
- B. Features of the district
- C. Permitted Uses in the district (those requiring a zoning Permit)
- D. Conditional Uses in the district (those requiring Development Review Board written decision and approval)
- E. Allowed Uses in the district (those not requiring a zoning Permit or Development Review Board written decision and approval)
- F. Any special development incentives in the district
- G. A chart outlining development requirements of the district for:
 1. Density limits (how many Structures are allowed based on Lot acreage)
 2. Structures or Uses per Lot
 3. Maximum number of principle Structures or Uses allowed
 4. Minimum Lot Size (how big the Lot must be)
 5. Minimum Frontage (how many feet of the Lot must "front" a legal source of access)
 6. Minimum Depth (how many feet the sides of the Lot must be "deep" from the front.
 7. Structure Height Maximum (how tall a Structure may be)
 8. Setback – Front (how many feet a Structure must be from the access road or right-of-way
 9. Setback – Side/Rear (how many feet a Structure must be from a side or rear property line

Section 450: Districts

A) Conservation

B) Village (a) within the HDRD and (b) outside the HDRD have unique dimensional requirements

C) Residential

D) Resort Residential

E) Commercial/Residential

F) Resort Commercial/Residential

5. Site Criteria – Commercial/Residential District:

	Commercial Uses	Residential Uses
Density Limits	Maximum of ; 25% Lot Coverage. Fences are not counted toward density limits.	Maximum of ; 25% Lot Coverage. 1 dwelling unit plus an Accessory Apartment or 1 two-unit dwelling per acre. Fences are not counted toward density limits.
Structures/Uses Per Lot	Unlimited.	Maximum of: 1 Principal Structure and 1 Principal Use. Home Business and Home Industry are not considered Principal Uses. A second dwelling in a separate Principal Structure may be constructed on any Lot with more than three acres. Fences are not counted toward Structures limits.
Dimensional Requirements:	Commercial and Residential Uses	
Minimum Lot Size:	1 Acre	
Minimum Lot Frontage:	150 ft	
Minimum Lot Depth:	150 ft	
Structure Height (Max):	38 ft to the highest point of the ridge line All Structures over 24 feet from average grade to the eave line or 38 feet to the ridge line are subject to Development Review Board written decision and approval. *	
Setback-Front (Min):	40 ft Measured from edge of the actual or proposed road right-of-way	
Setback-Side/Rear (Min):	20 ft Measured from the property line	

DISTRICT

Finding of Fact: Subject property is in the (E) Commercial/Residential district

Conclusions of Law: Findings met

USES

Finding of Facts: The Primary Use of the Property is Residential

Conclusions of Law: The proposed Accessory Building Use is Permitted

ARTICLE VII: STANDARDS

Section 705: Changes to nonconforming structures, lots and/or Uses.

Findings of Fact: (This is not a change to a non-conforming structure – this section is NOT APPLICABLE)

Section 706: Nonconforming structures on Developed Land/Lot.

Findings of Fact: (This is not a change to a non-conforming structure on developed land– this section is NOT APPLICABLE)

CONDITIONS:

The application for development within the 20' side yard setback as shown in exhibit 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 1-8 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.

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.

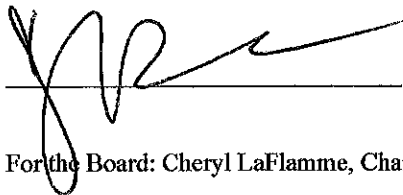
Town of Wilmington, Zoning Administrator reserves the right to monitor compliance with this decision and all decisions issued by the Development Review Board.

IN FAVOR of granting the APPROVAL FOR the above referenced application, with whatever restrictions, requirements, limitations, or specifications are contained herein:

Charles Foster, Cheryl LaFlamme and Chrystal Holt

OPPOSED: Diane Abate

ABSTAINING:None



Date: 7/19/21

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.