

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: **Christopher & Lisa Lawrence**

Owner/Applicant(s) Mailing Address: 112 Meeting House Road, Haddam, CT

Address of the subject property: **589 Lake Raponda, Wilmington**

Tax Map: parcel # 02220034.0

A copy of the request is filed in the office of the Board and is

referred to as: **Description of Case per Public Notice:**

Application # **2022-041**: Owner or Owner's Representative: Lisa Lawrence

**Application seeks a waiver request for proposed construction project being built within prescribed residential setback.**

Applicable Wilmington Code Section II, IV, VII.

Notice for a public hearing was published in the Valley News on: \*

Notice was posted in three public places on: \*

A copy of the notice was mailed to the applicant on: \*

A copy of the notice was mailed to the abutters on: **June 29, 2022.**

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:

- A. Notice of Hearing (1 page)
- B. Application (4 pages)
- C. Notice to Abutters (1 page )
- D. Abutters List ( 1 page)
- E. Arial Map from Vermont Natural Resource Atlas – Flood Hazard Areas (1 page)
- F. Plot Site Plan – with Setbacks ( 1 page)
- G. Photo of Front Property/House – Existing Condition (1) Page
- H. Conceptual Front Elevation (1 page)
- I. Proposed First Floor Elevation

Applicable Wilmington Code Sections:

Article II- Administrative Procedures 222, 223, 224, 226, 227, 229,231,234

Article IV- 430, 431, 440, 450 C

Article VII- 705, 706, 710 A, B, 720, 721 F, 730 F, H

## **Article II - Administrative Procedures**

Section 222: Land Development and Uses Requiring Development Review Board Approval

Section 223: Development Review Board Site Plan and Design Review

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

Section 226: Development Review Board Decisions

Section 227: Plan Changes after Receiving a Development Review Board Decision

Section 229: Dimensional, Use, and Sign Waivers Granted by the Development Review Board [Pursuant to 24 V.S.A. § 4414(8)]

## **Section 231: Legal Nonconforming Structures, Uses, and Lots**

**Finding of Facts:** Property was developed prior to 1968 based on testimony of applicant. The lot is undersized at .37 acres. The principal structure sits within the required setbacks of two side yards and the front yard setback.

**Conclusions of Law:** The Lot and Building are both legal non-conforming.

## **Section 234: Dimensional, Use, 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.

## **ARTICLE IV DISTRICTS & USES**

### **Section 430: Nonconformities** (See 24 V.S.A. § 4412 (7))

A Nonconforming Structure, Lot and/or Use is a Structure, part of a Structure, a Lot (or parcel), and/or a Use that does not comply with the present ordinance, but which was developed legally in conformance with the ordinance in effect that the time it was created or established. This includes:

- A. Structures, Lots and/or Uses improperly authorized as a result of error by the Zoning Administrator. [See 24 V.S.A. §§ 4303(13) and 4412(7)].
- B. All Structures, parts of Structures, Lots and/or Uses existing prior to January 26, 1968, when the first Wilmington zoning ordinance was adopted.

See Definitions and Section 705-709 for information on changes to Legal Nonconforming Structures, Lots and Uses.

**Finding of Facts:** Property was developed prior to 1968 based on testimony of applicant. The lot is undersized at .37 acres. The principal structure sits within the required setbacks of two side yards and the front yard setback.

**Conclusions of Law:** The Lot and Building are both legal non-conforming.

### **Section 431: Changes to Legal Nonconforming Structures, Lots, and Uses**

Nonconforming Structures, Lots, and uses shall be allowed to exist indefinitely, in accordance with 24 V.S.A. § 4303(16) and § 4412(7).

#### **A. Legal Nonconforming Structures**

Any alteration, renovation or change for the purpose of compliance with environmental, safety, health, or energy codes will be allowed to increase the degree of nonconformity, but only to the extent necessary to achieve compliance.

A nonconforming Structure may be altered, renovated, or changed in any direction for any reason, including routine maintenance and repair, **so long as it will not increase the degree of nonconformity.** Changes to non-conforming structures are allowed to the extent that:

1. The change to the non-conforming element of the structure remains within the footprint of the original non-conforming element or feature, including any overhangs or cantilevering.
2. Evidence of the footprint of the original non-conforming structure must be clearly established and maintained by the property owner seeking to rebuild within the footprint of the original non-conforming structure. The burden of proof as to the location of the original structure remains with the property owner seeking a Permit for such a change.
3. The change shall not increase the degree of non-conformity or encroachment into a setback.
4. A change will be considered a further encroachment of the non-conforming feature or

element when it comes closer to the property line, or encroaches further into a setback, or further exceeds a height limitation creating the non-conformity.

5. A change will not be considered an increase in the degree of non-conformity provided that the change does not come closer to the property line, or encroach further into a setback, or further exceeds a height limitation creating the non-conformity. For example, if a house encroaches ten (10) feet into a setback and an attached deck encroaches fifteen (15) feet into that same setback, the house and the deck could be increased in size to the extent that no part of the structure encroaches more than the greatest existing encroachment of fifteen (15) feet into the setback. The house could be expanded by up to five (5) feet, and the deck could be continued so long as it did not encroach more than fifteen (15) feet into the setback.
6. A non-conforming structure which is destroyed or demolished may be restored to its earlier state provided the reconstruction commences within two (2) years of the date of loss and with the written approval of the Zoning Administrator for Permitted Uses or the Development Review Board for Conditional Uses. The Zoning Administrator or Development Review Board shall review such applications to reconstruct a non-conforming structure using the standards and processes applicable to all other Permitted Uses and Conditional Uses, as applicable, and to the extent that the reconstruction does not increase the degree of non-conformity.

A zoning Permit issued by the Zoning Administrator and approval by the Development Review Board, if necessary, is required prior to commencing any such changes.

Any Structure, Lot, or use approved for a nonconforming alteration, renovation, or change shall remain subject to all other provisions of this ordinance.

**B: Legal Nonconforming Uses**

A Nonconforming use may be altered or changed for any reason so long as, in the opinion of the Zoning Administrator, it will not increase the degree of nonconformity.

Any Nonconforming use which is not actively engaged in for a period of twelve (12) months shall be considered a discontinued use and the property will become subject to the requirements of this ordinance unless extension is granted by the Development Review Board.

**Finding of Facts:** The current structure encroaches into the front, rear and side yard setback. Applicant proposes to build an addition further into the front yard setback. Due to the small lot size and the close proximity of the existing structure to the rear and side yard setback and the location of the septic system on the adjacent side yard, this leaves the front yard the only probable area to build out the addition.

**Conclusions of Law:** The proposed addition is a change to the property that will increase the degree of non-conformity by further encroachment into the front yard setback and is not permitted under the current zoning.

**Section 440: Districts and District Requirements**

For the Districts of the town:

- Residential

## **Section 450: District Purposes and Descriptions**

### **C.Residential District (RES)**

**Finding of Facts:** The current use is residential.

**Conclusions of Law:** The property is in the Residential District.

## **ARTICLE VII STANDARDS**

### **Section 705: Changes to Nonconforming Structures, Lots and/or Uses**

[See 24 V.S.A. §§ 4303(13)(14)(15)(16) and 4412(7)].

- A. **Nonconforming Structure, Lot and/or Use is a** Structure, part of a Structure, a Lot (or parcel), and/or a Use that does not comply with the present ordinance, but which was created or established legally in conformance with the ordinance in effect at the time it was created or established. [See 24 V.S.A. §§ 4303(13 - 16) and 4412(7)] This includes:
  - 1. Structures, Lots and/or Uses improperly authorized as a result of error by the Zoning Administrator.
  - 2. All Structures, parts of Structures, Lots and/or Uses existing prior to January 26, 1968, when the first Wilmington zoning ordinance was adopted.
- B. Nonconforming Structures, Lots and/or Uses created or established legally in conformity with the ordinance in effect at the time it was created or established:
  - 1. Shall be allowed to exist indefinitely.
  - 2. Will not be subject to penalties for nonconforming elements that were in conformity with the ordinance in effect at the time they were created or established.
  - 3. May be altered, renovated, changed, or developed in accordance with the requirements of Sections 706, 707, and 708.
  - 4. **Are not eligible for Waivers under Section 231 of this ordinance.**
- C. Changes to a Nonconforming Structure, Lot, or Use which do not comply with the requirements of this Section are illegal and will be subject to remedy consistent with the enforcement, violations and penalties provisions of this ordinance (see Article II Section 215 & 216).

### **Section 706: Nonconforming 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 or other Structure; the demolition, destruction, or razing of a Structure, whether intentional or unintentional; any change in the Use of any building or other Structure, Land, or Use; the Subdivision of a parcel into two (2) or more parcels; any mining, landfill, or excavation that increases peak off-site flow; and any water impoundment such as lakes and ponds”. [See Definitions Land Development, Lot Development]
- B. A Nonconforming Structure on a Developed Lot/Developed Land may be modified consistent with the guidelines of this Section with the prior written decision and approval of the Development Review Board. Modifications to Nonconforming

Structures are not eligible for a Waiver.

- C. In a Development Review Board hearing where there is question as to whether a Lot has been previously Developed, the burden of proof lies with the applicant. This burden may be met through dated photographs, expert testimony, or the provision of town land records or Grand List of the Town of Wilmington records back to January 26, 1968 (the time of the first Wilmington zoning ordinance) or the time when the Lot/land was established or created, whichever is later,
- D. No alteration, renovation, or change shall exceed thirty (30) feet to the highest point of the ridge line. Nonconforming Structures and Land Development of Nonconforming Lots are not eligible for Height Limitation Exceptions – Review Options under Section 442 of this ordinance or for Waivers under Section 231 of this ordinance.
- E. A Nonconforming Structure on a Developed Lot may be altered, renovated, or changed in any direction for any reason, with the written decision and approval of the Development Review Board (except as provided for in item F below), provided that:
  - 1. The change to the non-conforming element of the Structure:
    - a. Remains within the footprint of the original non-conforming element or feature, including any overhangs or cantilevering, or

Determining Footprint of Original Structure:

Evidence of the footprint of the original non-conforming Structure shall be clearly established and maintained by the property owner seeking to rebuild within the footprint of the original non-conforming Structure. The burden of proof as to the location and dimensions of the original Structure remains with the property owner seeking a Permit for such a change. For owners failing to clearly establish and maintain evidence of the footprint and dimensions of the original Structure on the Lot, the applicant shall provide evidence of the prior Structure's dimensions and photos of the prior Structure's location in relation to the Lot or such other documentation as may demonstrate the location and dimensions of the original footprint of the Structure.

- b. Does not increase the Degree of Nonconformity, except that when alteration, renovation, or change is for the purpose of compliance with environmental, safety, health, or energy codes the change is allowed to increase the degree of nonconformity, but only to the minimum necessary to achieve compliance.

Measuring Degree of Nonconformity:

If a house currently encroaches ten (10) feet into a setback and an attached porch encroaches fifteen (15) feet into the same setback, there is an existing non-conformity of 15 feet. The degree of non-conformity is measured from the greatest degree of non-conformity for that Structure, or in this case 15 feet. Additions that do not exceed the greatest current non-conformity would not be considered an increase in the degree of non-conformity.

Using the above example; the porch with the 15 foot encroachment could be extended so long as it stays less than or equal to the 15 feet of non-conformity, or the 10 foot setback non-conformity of the house could be

expanded another 5 feet, up to the 15 foot existing non-conformity, without increasing the degree of non-conformity. No Waiver would be required as the Structure is not increasing the degree of non-conformity.

- F. A Nonconforming Structure which is demolished or destroyed unintentionally may, with a Permit from the Zoning Administrator, be restored to its earlier state, matching all prior dimensions including but not limited to roof pitch, height, footprint, etc., provided the reconstruction commences within two (2) years of the date of loss. Reconstruction seeking any changes to prior dimensions is subject to the terms of this Section and require a written decision and approval from the Development Review Board.

**Finding of Facts:** The proposed addition increases the existing degree of non-conformity by encroaching further into the front yard setback. The addition is not for the purpose of compliance with environmental safety, health or energy codes.

**Conclusions of Law:** The proposed changes do not meet the provisions of E. b.

### **Section 710: Use Performance Standards**

Pursuant to 24 V.S.A. § 4414(5) Performance Standards, the following standards shall apply to all Uses and land development in the town.

- A. Vibration: No continuous, permanent, ongoing, or frequent vibration shall be produced which, when transmitted, is discernible at the property line without the aid of instruments.

Temporary vibration created during land development should be limited to daylight hours to preserve quality of life in neighboring properties.

- B. Noise: continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation (in the judgment of the Development Review Board) must not exist at the property boundary line. Recurring periodic or intermittent noises in excess of that of a normal lawn mower (in the judgment of the Development Review Board) at the property line is allowed provided it does not occur between the hours of nine (9) PM and seven (7) AM, and does not significantly detract from or diminish other property's allowed Use or land development.

In that ski-areas reasonably expected to have snowmaking ski-areas and in that those owning property near a ski area would reasonably expect to hear snow-making equipment at any time, snowmaking equipment in a Resort Commercial/Residential District of a Resort Residential District is exempt from this provision.

Temporary noise created during land development should be limited to daylight hours to preserve quality of life for neighboring properties.

**Finding of Facts:** Applicant testified there would be no vibration or noise as a result of the project that would be permanent, continuous, frequent or ongoing.

**Conclusions of Law:** The condition is met.

### **Section 720: Applicability of Conditional Use Standards and Site Plan and Design**

## **Guidelines**

Conditional Uses are subject to both General and Specific Standards as defined below. Site Plan and Design Guidelines of Appendix I shall be applied to development within the Historic Design Review District and are recommended in all other districts.

For structures outside of the Historic Design Review District listed in Appendix II, the Development Review Board shall encourage the applicant to conform with the standards of Section 723, however, the Development Review Board shall not withhold approval based solely on the applicant's non-compliance with Section 723 outside of the Historic Design Review District.

### **Section 721: Conditional Use - General Standards**

In all districts, all Conditional Use development shall protect from undue adverse effects: (24 V.S.A. § 4414 (3)(A)). No Land Development or Use shall result in an undue adverse effect on any of the following:

F. The character, aesthetics, and scenic value of the neighborhood and area affected, as defined by the purpose or purposes of the zoning district within which the project is located and specifically stated policies and standards of this ordinance and the Town Plan.

The Development Review Board shall review all proposed Conditional Use development in all districts, demonstrating no undue adverse effect on Conditional Use General Standards A - F above.

**Finding of Facts:** The character, aesthetics and scenic value of the neighborhood are not affected.

**Conclusions of Law:** The condition is met.

### **Section 730: Specific Standards (24 V.S.A. § 4414 (3)(B))**

The Development Review Board shall refer to the Existing Land Use, Natural Resources, Special Resource Areas, Water Resources, Transportation System, and Community Facility and Utilities Maps of Appendices IV – IX to aid their decisions on proposed land development, including but not limited to the following areas:

1. Lands Over 2500 Feet in Elevation
2. Surface Waters
3. Water Source Protection Areas
4. Flood Hazard Areas
5. Deer Wintering Areas
6. Wildlife Crossings
7. Rare and Threatened Plants
8. Scenic Areas
9. Scenic Roads
10. Impact on Community Facilities and Utilities
11. Impact on Transportation Systems



F. Landscaping, Screening and Buffer Areas: As defined in Section 722(A) development shall “preserve the rural and agricultural character and ambiance of the community”. Natural features characteristic of the town’s rural and agricultural character shall be used in Landscaping and Screening to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

H. Wastewater and Potable Water: Administrator may issue an initial Permit conditioned upon receipt of evidence of a wastewater and potable water supply Permit, if none is provided with the submitted application. A final Permit may be issued by the Zoning Administrator after receiving evidence that a Permit has been issued, as applicable, under chapter 64 Title 10. Development Review Board decisions shall instruct the applicant of their responsibility in obtaining state and federal Permits and may condition their decision on obtaining such a Permit if none has been obtained.

**Finding of Facts:** The addition would not adversely affect the landscape. Screening and buffer areas would seem unnecessary. The property already has a permitted waste and potable water supply.

**Conclusions of Law:** Not applicable.

**CONCLUSION:**

The application for a waiver to increase the degree of non-conformity in order to build an addition is APPROVED based on the following conclusions and conditions.

1. The small lot size, narrow shape, location of the primary structure relative to the septic system and lot lines creates an unnecessary hardship.
2. The addition can not infringe on the 25’ right of way measured from the center of highway.

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

Cheryl LaFlamme  
Crystal Holt  
Charles Foster

OPPOSED:

Paul Lockyear  
Diane Abate

ABSTAINING:

Justin Linder

\_\_\_\_\_

Date: \_\_\_\_\_

For the Board: Cheryl LaFlamme, Chairperson,

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

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.*