

**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: **Andrew Sheets**

Owner/Applicant(s) Mailing Address: PO Box 1256, Wilmington, VT 05363

Address of the subject property: **161 VT RT 9 W, Wilmington, VT**

Tax Map: parcel # **20-20-13**

A copy of the request is filed in the office of the Board and is referred to as: **Permit # 2022-112**

Description of Case per Public Notice

Application # **2022-112**

Applicant proposes a waiver for an accessory structure within the front and side setback areas.

Applicable Code Sections:

Article II- Sections: 222, 224, 226, 227, 231, 272

Article IV- Sections: 440, 450 E

Article VI- All Sections

Article VII- Sections: 705, 706, 721 F, 730 F, I, 732 H

Notice for a public hearing was published in the Valley News on: **January 19, 2023**

Notice was posted in three public places on: **January 11, 2023**

A copy of the notice was mailed to the applicant on: **January 11, 2023**

A copy of the notice was mailed to the abutters on: **January 11, 2023**

Appeal period for this Case expires on: _____

Approval expires on: _____

Date of Public Hearing: **February 6, 2023**

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

Andrew Sheets

EXHIBITS

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

1. Warning of DRB Hearing
2. Application for DRB Review (4 pages)
3. Abutters list and postage stamp
4. Town of Wilmington parcel map and drawing
5. Copy of Notice of Alleged Violation letter dated 11/16/2022
6. Copy of Letter from Zoning Administrator to Applicant re: missing permit dated 10/24/2022
7. Town of Wilmington parcel map with property boundaries highlighted

SYNOPSIS

Applicant proposes a waiver for an accessory structure within the front and side setback areas.

ARTICLE II: ADMINISTRATIVE PROCEDURES

Section 222 Conditional Uses

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 231 Criteria for Obtaining a Dimensional Waiver from the Development Review Board

Section 272 Who May Attend and Be Heard At A Public Hearing

Finding of Facts: Sections noted outline administrative procedures, definitions, role of the DRB, and responsibility of the applicant. Application was received containing all necessary documents and those in attendance were advised of who may provide testimony during the hearing. Section 231 outlines the criteria for obtaining a dimensional waiver and testimony was received from the applicant and the Zoning Administrator regarding these criteria.

Conclusion of Law: Article II is not met due to the requirements of a dimensional waiver not being met.

ARTICLE IV: DISTRICTS & USES

Section 440 Districts and District Requirements

Section 450 E District Purposes and Descriptions- Commercial/Residential District (COM/RES)

Finding of Facts: Subject property is within the Commercial/Residential District (Section 450 E). The property is identified as Tax Map: parcel # **20-20-13**. The primary use is currently residential, and this application seeks a wavier for an accessory structure within the front and/or side setback areas.

Conclusion of Law: A waiver is required for the applicant's proposed accessory structure due to its size, with exceeds 150 sq ft, and due to the placement, which falls within the designated front set back of 20' and/or the side setback of 10' (Setback dimensions are based on non-conforming lot specifications). Proposed location would put front setback at 2-4' and side setback at 10', per applicant's testimony.

ARTICLE VI: FLOOD HAZARD DISTRICT

Section 600 Statutory Authorization

Section 601 Statement of Purpose

Section 602 Lands to Which These Regulations Apply

Section 603 Development Permit Required

Section 604 Interpretation of Flood Hazard Area Boundaries

Section 605 Permitted Uses

Section 606 Conditional Uses

- Section 607 Permit Application Uses
- Section 608 Conditional Use Application Requirements
- Section 609 Review Procedures
- Section 610 Development Standards
- Section 611 Administration and Variances
- Section 612 Warning of Disclaimer of Liability
- Section 613 Validity and Severability
- Section 614 Precedence of Bylaw
- Section 615 Enforcement and Penalties
- Section 620 Flood Hazard Area Definitions

Finding of Facts: Portions of the subject property falls within the flood hazard district. Proposed location for the accessory structure does not fall within the flood hazard area.

Conclusion of Law: Article VI is not applicable to the applicant’s waiver request due to the location of the accessory structure being outside the floodway area.

ARTICLE VII: STANDARDS

- Section 705 Changes to Nonconforming Structures, Lots and/or Uses
- Section 706 Nonconforming Structures on Developed Land/Lot
- Section 721 Conditional Use- General Standards
- Section 730 Specific Standards
- Section 732 Other Specific Standards

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

Section 706: Nonconforming Structures on Developed Land/Lot

Section 721: General Standards

The proposed use shall protect against undue adverse effect on:

F. The character, aesthetics, and scenic value of the neighborhood and area affected.

Findings of Fact: Applicant testifies that no undue adverse effects shall arise from approval of this application. The Zoning Administrator provided testimony that no complaints had been received as of the date of this hearing. The placement of the accessory structure is blocked partially by the applicant’s privacy fence; however, it is the opinion of this DRB that the aesthetics and scenic value of the neighborhood are in fact negatively impacted by the structure and it’s placement.

Conclusions of Law: This general standard is not met.

Section 730: Specific Standards

Land development and Uses in all Districts shall preserve the character of town consistent with its rural and agricultural heritage, conforming to the following:

F. Landscaping, Screening and Development: Shall “preserve the rural and agricultural character and ambiance of the community”. Natural features characteristic of the town’s rural and agricultural nature shall be preserved. Landscaping and Screening shall be used to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

Findings of Fact: Applicant testifies that the current privacy fence will remain in place and the that the accessory structure will not remain in place permanently.

Conclusions of Law: Standard 730 F is met.

I. Natural Resources and Features- No changes to the landscape proposed, not applicable

Section 732: Other Specific Standards

H. Recreational Vehicle Storage: Recreational Vehicle(s)/Travel Trailer(s), tents, or boats may be stored by a homeowner on their property but shall not be Used as living quarters for longer than 30 days per year and shall not be connected to any utility, including water and sewer.

Finding of Fact: RV parked on the applicant's property meets these requirements.

Conclusions of Law: Section 732 H is met.

CONDITIONS:

The application for development is **DENIED**.

In the opinion of this Development Review Board, the approval of this application is not possible due to the setback encroachment and the impact on the area's aesthetics and character. The criteria for a dimensional waiver is not met.

There is a thirty (30) day appeal period from the date of signature before this Approval becomes final.

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 DENIAL, AGAINST the above referenced application, with whatever restrictions, requirements, limitations or specifications are contained herein:

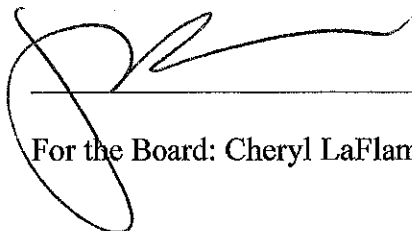
Cheryl LaFlamme
Diane Abate
Justin Linder
Chrystal Holt

OPPOSED:

None

ABSTAINING:

None



Date: March 3, 2023

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.