

# Subdivision Application

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**11 APRIL 2025**

## OBJECTIVE

We would like to subdivide our 15 acre property into two lots; 1.74 acres which includes our current house, and 13.05 acres which includes our studio barn. We'd like to sell our house and rezone our current studio/barn to a home occupancy. This proposal would not require any new construction.

## OVERVIEW

Currently the barn/studio lot is zoned "Agricultural Use Only, No Residential Use." This restriction was put into place from a settlement agreement stemming from an appeal to the environmental court by the Developer of our Wolf Lane HOA ( Docket No.221-12-03 Vtec ) . The town of Richmond DRB denied his original 8 lot subdivision application asking instead for a Planned Residential Development review.

The environmental court sided in favor of the developer and sent the matter back to the DRB for approval on the merits of the original application.

A settlement agreement was worked out between the parties with 7 conditions. Condition # 3 is our focus.

- "The portion of Lot 7 located adjacent to Hinesburg Road shall be preserved without any building envelopes because it contains septic and disposal fields;except for the proposed building envelope for agricultural use only-no residential use. Any other construction on it would interfere aesthetically with the view of the rest of the home sites on the remaining lots and/or restrict the homeowner's association from properly managing the common facilities such as the septic system."

In 2015, the Richmond DRB approved the construction of our studio/barn ( Application 15-100 )to serve as our photography studio and house our farming equipment and classified the structure as "Cottage Industry." During that time, we addressed the concerns stated above, both in regards to septic and viewshed.

Now we are going before the Richmond DRB with the intent to subdivide our lot, reverting the existing House Lot #8 back to its original 1.74 acre lot and creating a new Lot with the remaining 13 acres. We will convert the interior of our studio/barn to a "Home Occupancy" and continue to farm agriculturally accepted crops. Our farming operation meets the state threshold to be a SFO and satisfy all RAPs requirements.

Below we address the Hilderbrand and Stowe Club Highlands ruling as they pertain to our subdivision proposal.

- “The applicant must show that the condition they seek to amend was not critical to the issuance of the permit.”
  - a. The original case brought before the Environmental Court ( Docket No.221-12-03 ) was in regards to PRD vs HOA subdivision classification. We have no argument with this ruling/judgement dated November 30th 2004. We would like to amend a portion of condition #3 of the settlement agreement, dated April 19th 2006, which stemmed from the original 2004 Environmental Court ruling. The DRB’s final decision approving our HOA ( Application # 05-057) recorded in Bk172 Pg615.
  - b. From the Richmond Town Records: “The survey plat filed with the town clerk shall be the official plat of record.”
    - i. (Cite as: 27 V.S.A. § 1401)
    - ii. (d) The survey plat filed with the town clerk shall be the official plat of record. (Added 1969, No. 235 (Adj. Sess.), § 3, amended 1991, No. 163 (Adj. Sess.), § 1; 2019, No. 38, § 3, eff. Jan. 1, 2020.)
    - iii. No restrictions in association with this building envelope are identified on any of the three Subdivision Plats on file with the clerks office: Slide 122/Pg139 recorded 02/2/2009, Slide121/Pg131 recorded 10/28/2008 and slide 113/pg84 recorded 11/02/2006 .
    - iv. The three covenants on file do not discuss restrictions on this building envelope: Declaration of Covenants Bk175/Pg355, Amended Declaration of Covenants Bk 182/Pg313, Second Amended Declaration of Covenants Bk186/Pg154
  - c. In regards to the DRB Decision for the Subdivision Amendment Application 09-003 which created Lot 8, dated 9/10/2008, a prior zoning administrator wrote the following:
    - i. “ I am writing up the staff report today – I just found the DRB decision from when Lot 8 was created – for some reason the decision is not filed with the clerk’s office as it should be – but found it on the hard drive in an old file. The DRB decision does not say anything about the Ag envelope”. niels

As discussed above, all subsequent maps (including the subdivision plat maps on file with the Town Clerk) illustrate the envelope but do not include any restrictions. Important documents including covenants, Plats, and the DRB Decision dated 9/10/2008, do not discuss the building envelope ag use only restrictions. Interestingly, other conditions stemming from this decision are listed on all aforementioned Plats on file as well as in covenants.

Therefore, given the lack of any restrictions noted on the building envelope in any of the listed maps, covenants, and the DRB Decision dated 9/10/2008 that covered the expansion of Lot 7 to its present day lot 8 configuration, suggests that this condition was not a critical condition.

The Stowe Club Highlands Analysis can also be used as a means to amend an existing permit condition.

- In both rulings (Hilderbrand and Stowe Club Highlands) they describe that “The doctrine seeks to balance the competing interests of finality and flexibility in the land use and planning context. The Supreme Court and lower court also acknowledge that it is possible to amend such permits, and in certain situations flexibility should be given precedence over finality.

In Balancing Flexibility against finality please consider these as relevant factors in this unique case:

"The portion of Lot 7 located adjacent to Hinesburg Road shall be preserved without any building envelopes because it contains septic and disposal fields;except for the proposed building envelope for agricultural use only-no residential use. Any other construction on it would interfere aesthetically with the view of the rest of the home sites on the remaining lots and/or restrict the homeowner's association from properly managing the common facilities such as the septic system."

- (a)Changes in facts: the review of the construction of the Wild Apple HOA community septic system conclusively show that our construction has not and does not impede or restrict in any way the septic system referenced in condition #3.
- (b)Also to note, The DRB Decision ( Application #15-100 dated November 11, 2015) confirms this in their notes about the force main that runs along the south side of the field road. “Construction of the studio/barn within the envelope illustrated on the plat maps does not interfere with the septic system”. In addition, access to the septic system in the west corner of the lot is not restricted.”
- In fact, our presence and maintenance of the field road supports the continued functioning of the system, and does not impede it. Case in point, when the back portion of the field road washed out the summer of 2024 we contracted and paid for the heavy repair, averting the septic main from potentially freezing this past winter due to the loss of so much ground cover. This was unforeseeable at the time of the creation of condition #3, in which case, the opposite of the stated condition would exist.
- (c)We built our studio/barn to convey a modern agricultural use structure. One that would help to communicate a strong rural character. We worked with the town to mitigate the impact on the visual shed that is referenced in condition #3. No new construction is to

take place. The construction can not interfere aesthetically with the view of the other home sites as it already exists without objection.

- (d)The #1 stated goal of the 2018 Richmond Town Plan: “Encourage smart growth as defined in Vermont statutes, which allows development while preserving Richmond's rural character” pg25.
- Also listed in the 2018 Town Plan is a description of the Agricultural-Residential Zone of which we reside ( #7 ).

“These are rural areas with low density residential development, agricultural and forest use areas. They contribute to Richmond’s prized rural character and natural resource benefits Cottage industries, home-based businesses and commercial activities that directly support the economic viability of agricultural and forest industries are allowed.” Our photography cottage industry is agricultural and we are a small farm growing agricultural crops for our skin care company.

We work to further the goals and objectives of the duly adopted municipal plans.

## SUMMATION

It seems clear that the original conditions for lot 8 were included to preserve the integrity of Richmond’s rural landscape, view shed, and agrarian character. Our proposal to amend a portion of condition # 3 is not in conflict with this stated goal but in harmony with it. We are seeking to reinforce this core goal, as stated in the Richmond 2018 Town Plan, of preserving the rural character of Richmond's A/R districts through stewardship of open lands and home based businesses that are focused on agricultural activities.

Farming today is much more difficult with rising costs across the board. For new generation farmers, without inherited, multi generational assets in land and equipment, this is even more difficult. We actively farm our land, focusing on flowers and herbs for our skincare company, Folk. We use our current barn space to photograph local products, food, cookbooks and travel widely across the state photographing other Vermont farms ([www.jessicasipephotography.com](http://www.jessicasipephotography.com)). Our mission in everything we do is to preserve the rural, iconic landscape of Vermont.

As life evolves both personally and at large, we find ourselves in a position of needing to downsize at the same time that our community needs more housing. This amendment allows us to continue to contribute to the community, preserve the agrarian culture of Richmond, increase the tax base and open up much needed housing stock without having to build any new structure.

We will be selling regardless, whether it’s just the house or the whole property. If it’s the whole property, the future of this land is unknown. We’ve built something that very much suits our particular needs, but could be used in very different ways by someone else. If we truly want to maintain the integrity of our

rural character here in Richmond, it's going to be necessary to consider flexibility in certain circumstances to support these ideals in our modern day.