

TOWN OF RANDOLPH, VERMONT  
DEVELOPMENT REVIEW BOARD  
**MEMORANDUM OF DECISION**  
(Findings of Facts, Conclusions, and Decision)

**APPELLANTS:** Christopher and Laura Soares  
43 Skyview Road  
Randolph Center, VT 05061

**PERMIT NO.:** Z08-32

**PROPERTY OWNERS:** Appellants

## I. INTRODUCTION

On May 12, 2008, **Christopher Soares** (“Appellant”) filed an application for a zoning permit for a project generally described as **the construction of a 8-foot by 15-foot carport**. The subject property is parcel number **108041** which is **0.62 acres** in size and located at **43 Skyview Road**. The application was deemed complete pursuant to the Development Review Board (“Board”) Rules of Procedure Section 301 on May 28, 2008.

Under the Randolph Zoning Regulations (“Regulations”), projects are reviewed based on the site plan, conditional use and/or any other applicable criteria of the Regulations. Before the Administrative Officer (“Administrator”) may grant a permit, the Board must find that the project complies with all applicable criteria and approve the site plan, the conditional use and/or provide any other approval, as required.

Decisions must be stated in the form of Findings of Facts and Conclusions of Law. In rendering this decision, the Board relied on the following:

1. Sworn testimony presented to and evidence received by the Board during the first and final public hearing held on June 24, 2008;
2. Documents contained in this application’s file, the Regulations, Town Plan and the Randolph municipal records.

The Board closed the public hearing on June 24, 2008 and rendered an oral decision in this matter. This written decision is required pursuant to 24 VSA ch. 36 §1209 and supercedes the oral decision.

## II. DETERMINATIONS BY THE ADMINISTRATOR

The Administrator has made the following determinations:

1. The subject property is in the Rural Use 2-20 (RU2-20) District.
2. The project requires that a variance be granted because the proposed carport does not meet the front yard setback requirement.

On May 14, 2008, upon request for the variance by the Appellant, the Administrator referred the application to the Board for review and approval as determined.

## III. PARTICIPANTS

For the purposes of this application, “interested persons” are those who fulfill the requirements of 24 VSA ch. 117 §4465. The attached Service List for this project includes the Appellant and

persons<sup>1</sup> who participated at the public hearing and/or submitted written comments on the application.

Participating Board members were John Becker, J. Kenneth Currier, Frank Reed, Krista Rumrill and Joel Tillberg.

#### IV. FINDINGS OF FACTS

*The following findings are facts that were entered into the record for this application and relied upon by the Board in formulating its conclusions and decisions. While other evidence may have been or is also entered into the record, if it is not included herein, the Board has determined that it is either not relevant evidence or that it is not a fact. In making the following findings, the language contained in the five criteria in 24 VSA ch. 117 §4469 has been summarized.*

##### **Need for a Variance/Project Description**

1. The Appellant has filed an application for the construction of a 8-foot by 15-foot carport. *(application)*
2. The subject property is 160 feet by 170 feet, for a total area of 27,200 SF. It has frontage on Skyview Road which is a private road with a 50-foot wide right-of-way. *(application, testimony of C. Soares and municipal records)*
3. The subject property is in the RU2-20 District, which has a 30-foot front yard setback requirement. The application erroneously indicates that the proposed carport is 35 feet from the centerline of the right-of-way. The Appellant testified that the carport would actually be 15 feet from the edge of the right-of-way, therefore a variance from the front yard setback requirement is needed. *(Randolph Zoning Regulations and testimony of C. Soares)*

##### **CRITERION 1**

###### Uniqueness of the property

4. There are no unique physical circumstances for the subject property. *(testimony of C. Soares)*

###### Hardship and cause of hardship

5. There are currently five (5) drivers residing in the house and there are four (4) cars. The garage can accommodate only two vehicles. The garage is perpendicular to the driveway and therefore it is difficult to see coming out of the garage. To accommodate this configuration, the other two have to be “jockeyed around” in the driveway. *(testimony of C. Soares)*
6. It is easier to construct a simple roof off the side of the garage than to construct a completely stand-alone structure, especially as there is a slope or drop-off by the leachfield on the west side of the driveway. *(testimony of C. Soares)*
7. Aesthetically, it would look better behind the trees at its proposed location than anywhere else. *(testimony of C. Soares and R. Winzenried)*

##### **CRITERION 2 - Reasonable use of the property**

8. The current use of the property is a single-family residence with a two-car garage. *(application)*

##### **CRITERION 3 - Creation of the hardship**

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<sup>1</sup> By inclusion in this section of the Memorandum of Decision, the Board does not address the status of any of the people listed above as “interested persons” as defined in the above-referenced state statute.

9. The appellant purchased the building in 1993 and was aware that the driveway is perpendicular to the garage, the leachfield is off of the driveway and the well is in the front yard. (*application and testimony of C. Soares*)

## V. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board makes the following conclusions regarding the project described in the application referred to above and including the Appellant's representations at the public hearing:

### Variance Criteria

1. There are not unique physical circumstances or conditions of the subject property.
2. The property is currently a single-family residence with a two-car garage and therefore a carport is not necessary to enable the reasonable use of the property.
3. The alleged hardship has been created by the appellant, as he was aware of the alleged limitations of the property when it was purchased (driveway configuration and location of well and leachfield).

The Board does not address variance criteria 4 and 5, as a negative conclusion of only one of the criterion is enough to deny the request.

## VI. DECISION<sup>2</sup>

Based upon the foregoing Findings of Facts and Conclusions of Law, the Board hereby denies the request for a variance for the carport as applied for in zoning permit application #Z08-32 and including the evidence and testimony entered into the record as Findings of Fact.

Dated at Randolph, Vermont this 29<sup>th</sup> day of July, 2008.

RANDOLPH DEVELOPMENT REVIEW BOARD

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/s/ Joel Tillberg, Chair

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/s/ John Becker

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/s/ J. Kenneth Currier

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/s/ Frank Reed

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/s/ Krista Rumrill

<sup>2</sup> An interested party (as defined in 24 VSA §4465) who participated in this proceeding may appeal this decision to the Vermont Environmental Court within 30 days of the date of the decision, for a fee of \$250 and a notice in writing, certified mailed to the Environmental Court, giving reasons for the appeal, and a copy mailed to the Zoning Administrator. Failure to appeal this decision may prevent any party from arguing against its elements in a future hearing or appeal. 24 VSA §4472.