

**TOWN OF DUMMERSTON
DEVELOPMENT REVIEW BOARD
LAND USE DECISION**

Name of Applicant/Owners: Peter M. Barnett
Location of Property: Old Clay Pit Road, Dummerston, Vermont 05301
Mailing Address: 10 Zuell Hill Road, Monson MA 01057
Application Number: #3126 Variance application, March 11, 2008

The matter came before a duly warned public hearing of the Dummerston Development Review Board (DRB) held on April 15, 2008 at the Dummerston Town Offices, Dummerston Center, Vermont. The hearing was recessed because more information, specifically concerning the existing septic system, was needed in order to make a decision. The hearing was re-convened on April 29, 2008 followed by deliberations and conclusions from the DRB at the Dummerston Town Offices, Dummerston Center, Vermont. The public hearing session on April 15th was preceded by a site visit.

Present and participating at both sessions of the hearing were the following members of the Development Review Board: Patricia Jaquith, Regina Rockefeller, Cynthia Wilcox, Herb Rest and Lew Sorenson. Alternates, Rick Sullivan and John Warren were also present, but not seated. Also present and participating on April 15th were the owner, Peter Barnett, Chase Barnett, D. Glenn Annis, Charlotte Neer, Matthew Blau, John Carter, Daniel Jenks, potential buyers Sherie Lewis and Joshua Park, and Zoning Administrator, Gina Faro. Present and participating on April 29th were Peter Barnett, Chase Barnett, and Sherie Lewis.

FINDINGS OF FACT

The Board finds as follows:

1. The applicant filed Application for Zoning Permit #3126 on March 11, 2008 to construct a one-story modular, doublewide, 20' x 60' house containing 2 bedrooms, 2 baths with basement on Old Clay Pit Road in a Rural Residential District. The location of the proposed structure is on essentially the same site as that on which a recently removed mobile home was located. The well and septic systems, which served the mobile home, are proposed to serve the new home. The lot on which the proposed structure is to be built consists of 6.35 acres, a 45'± shelf of which was created with fill along the road to accommodate the former mobile home and its water supply and septic systems. From this level area along the road, the land slopes steeply down to a meadow which is crossed by a stream and pond. Beyond the stream and pond the property continues with a lower leveled, uneven terrain to a stonewall.
2. On March 13, 2008 the Zoning Administrator disapproved the application for the reason stated as follows: "because it does not meet the setback requirements as stated in the Town of Dummerston Bylaws, section 220: Building Setback minimum from the center of the road or right of way must be 50'." Consequently, the applicant is requesting a variance for the front yard setback which would be 35' from the center of Old Clay Pit Road. (The application was amended between the two portions of the public hearing to reduce the requested variance, increasing the proposed setback from 20' to 35', and to clarify the nature of the structure to be constructed.)

3. The owner had contracted with Steve Pro, Land Development Services of Keene, NH to inspect the property, especially its well and septic systems, for any other possible locations for systems between the road and the stream/pond location. In his letter of December 12, 2007, Mr. Pro states, " In my opinion, based upon my investigation and the soils reviewed, the property does not meet the criteria for a new sewage disposal system." He goes on to say that a new structure might be erected using the existing system with certain conditions to which the applicant agrees. At the first session of the public hearing, the DRB requested more information regarding the viability of the existing septic system. Steve Pro responded in his report of April 21, 2008 that the system was in "good" condition - that classification meaning a system in its young or early middle age, with no evidence of past flooding or high effluent.
4. The State of Vermont Agency of Natural Resources informed both the applicant and the Zoning Administrator that it has adopted a provision in the State Septic Rules by which it grants a "clean slate" exemption to the existing system for a replacement structure that was essentially in the same location as the previous structure and did not incur an increase in water and sewage flows. The Agency further declines to provide any testimony to the DRB on this application regarding wastewater treatment.
5. The property is located in a Rural Residential District (RR). Section 220 of the Bylaw requires for residential uses a 50-foot building setback from the front property line. Section 615 of the Bylaw provides that where the road right-of-way is less than 50 feet, the front yard requirement shall be measured from the centerline of the existing right-of-way and 25 feet shall be added to the front yard minimum requirement.
6. Old Clay Pit Road is a 50' private right of way serving another house beyond the Barnett property; and the traveled path is located within the property boundaries of the lot in question for most of its length, including the area immediately to the front of the proposed structure. Because the ROW is 50' wide, Section 615 of the Dummerston Zoning Bylaw does not apply. This results in the fact that although the proposed structure will be 35' from the center of the road, it will be more than that from the property line.
7. The public hearings have been noticed as required by Vermont statute including legal notice in the newspaper, posting at three locations in the Town, posting on the property and written notification to adjoining property owners. The notification provisions undertaken by the applicant have been documented by written certification to the Board.
8. Testimony was offered by several of the abutting landowners expressing gratitude for the removal of the derelict mobile home and interest in seeing a new family home built on the site. The applicant testified to the variance findings required by Article 4469 of 24 VSA, Chapter 117:
 - a. That the steepness of the parcel beyond the location for the proposed structure and the lack of alternate site for a new septic system owing to unsuitable soils are unique physical features that constitute an unnecessary hardship;
 - b. That because of these circumstances, the proposed location of the new structure on essentially the same site as the former structure is necessary and therefore cannot be constructed in strict conformity with the Bylaw's provisions. The location of the previous residence could not meet its setback requirements and received a variance. Because the property cannot be developed without using the State Septic Rule provision of "grandfathering" the existing previous site of the structure and septic system, a variance is necessary to enable reasonable use of the property;

- c. That the unnecessary hardship has not been created by the appellant, but by the former location of the house at the edge of the property, the rest of which is difficult to access in any reasonable way;
- d. That the variance, if authorized, will not alter the essential character of the neighborhood, and in fact will add to the safety and welfare of the occupants of the mixed residential neighborhood, while preserving the open space of the meadow, stream and pond for the benefit of all;
- e. That the variance, if authorized, represents the minimum variance that will afford relief and will represent the least deviation possible from the Bylaw's requirements. Given the location of the embankment 45' from the center of the road, a setback of 35' is the maximum that can be achieved without an unreasonable amount of fill being required.

CONCLUSIONS OF LAW AND DECISION

1. The requested variance and the Board's hearings have been properly warned, and notices advising adjoining property owners and the public have been provided as required by statute.
2. The Board concurs with the applicant's testimony regarding the hardship created by the conditions and circumstances of the property.
3. The Board therefore grants applicants the requested front yard setback variance as requested. Because of the vagueness of the location of the roadway with regard to the ROW and the property lines, the distance for this variance will be measured from the center of Old Clay Pit Road as it is configured on April 15, 2008 to the front line of the new structure, and shall be no less than 35'. The following condition will apply:
 - a. Submission of an engineering report that testifies to the viability of the site for a structure as planned.

The foregoing Decision was approved by a vote of the Board, 5 in favor and 0 opposed. This Decision is subject to appeal as provided by Vermont statute.

Dated: May 22, 2008

Pat Jaquith, Lew Sorenson, Cynthia Wilcox,
Regina Rockefeller and Herb Rest
DUMMERSTON DEVELOPMENT REVIEW BOARD

/s/
Cynthia G. Wilcox, Vice Chair
For the Board

EXHIBITS

- Zoning Permit Application #3126
- DRB Application with site plan
- Zoning Administrator Denial
- Steve Pro Land Development Services Site Evaluation Report 12/12/2007
- Steve Pro Land Development Services Septic System Report of Findings 4/21/08
- Dummerston ZBA Land Use Decision 3/26/1996 – Appeal # 2355
- Public Hearing Notice 3/25/08
- List of Adjoining Property Owners
- Applicant's Certification of Notice 4/10/08
- Potential Buyer exhibit of proposed manufactured home
- State of Vermont Agency of Natural Resources Guidance Document related to §1-304(a)(21)
- State of Vermont Agency of Natural Resources copy of §1-304(a)(21)
- Plot Plan with New Home 4/15/08
- Plot Plan with New Home – revised 4/29/08
- Proposed New Modular Home 4/23/08
- DRB – Attendance and sign-in April 15, 2008
- Applicant's written comments on Variance requirements 4/23/08