



TOWN OF DUMMERSTON
DEVELOPMENT REVIEW BOARD
LAND USE DECISION

Appellant: John K. and Lori V. Thibault
Mailing Address: 417 Schoolhouse Road, Dummerston, VT 05346
Location of Property: Parcel #756, 417 Schoolhouse Road, Dummerston, VT
Owner of Record: John K. and Lori V. Thibault

Superseded by The Thibault Meditation, May 2, 2013

Application: Site plan approval and variances for fencing height over 6 feet, deck construction, above ground pool placement and ancillary structure placement within side and front yard property setbacks .

Re: Referral of zoning permit application #3307 dated 6/19/12

The matter came before a duly warned public hearing of the Dummerston Development Review Board (DRB) held on August 15, 2012 at the Dummerston Congregational Church basement public meeting room, Dummerston Center, Vermont.

Present and participating were the following members of the DRB: Lew Sorenson, , Cynthia Wilcox, John Warren, Jack Lilly, Herbert Rest and alternates Hugh Worden and Steve Jarosak.

Also present: Patrick Gaffney, Sheri Momaney, Betty Ann and Reg Moore, Karen and John Abel.

The public hearing was adjourned following testimony of the appellant, discussion with the board and testimony by interested parties. Following the public meeting, on August 20, 2012 deliberations and motions of the DRB took place .

FINDINGS OF FACT

1. The applicant seeks approval for:
 - A newly constructed 8 foot high fence along the easterly property line
 - A site plan for the placement of multiple structures including an already constructed

- deck extension across the rear of the house and within setback requirements,
 - The placement of an above ground 15 x 30 foot swimming pool,
 - The construction of an “L” shaped deck structure to wrap around the southerly and easterly sides of the pool and located inside of setback requirements,
 - An ancillary structure for the storage of pool related and yard maintenance items.
2. The property is located within a rural residential zoned district and within a designated shoreline area.
 3. The Zoning Administrator denied the application for permit # 3307 on 7/2/12 , finding that the 8 foot fence, enlarged deck, above ground pool and shed requested land development requires a Site Plan approval and setback variances under sections 616, 323 and 220 of the Dummerston zoning Bylaws.
 4. The Dummerston DRB conducted a site visit on the property on August 15, 2012 at 5:35 PM.
 5. Dummerston Zoning Bylaws Section 220, 324, 615, and 616 set dimensional standards for setbacks and coverage for residences as follows: roadway centerline setbacks of 50 feet and 40 feet for all other property lines with a 50 foot shoreline setback for land development from Salmon Brook. Small accessory storage buildings of up to 200 square feet surface area and up to 12 feet in height may be placed as close as 6 feet from a side or rear property line. The Bylaw exempts from setback requirements fences, but requires a Site Plan Approval for those over 6 feet. Maximum coverage for residential use is 15% including all structures and parking areas. Bylaw Sections 725,726 and 728 set standards for Site Plan Reviews and Variances.
 6. The applicants described the difficulty in assessing the property dimensions and exact property line locations due to conflicting deed language and inconsistencies with the currently accepted property usage measurements.
 7. The newly constructed 8 foot fence is a replacement structure for a preexisting but zoning compatible 3 - 4 foot picket fence that existed along the easterly side of the property. The Applicant’s testimony explained their rationale for a structure of this height is to maintain the privacy of the pool area. The fence is stained or painted a deep blue color.
 8. The neighboring property owner, Betty Ann Morse, testified that the subject fence on their common property line detracts from their property because of its height and esthetic nature. Betty Ann Morse is found to be an interested party as defined by state statute.
 9. The exact location of the property boundary at the fence line is unclear but acknowledged both by the applicant and the contiguous property owner as approximately correct and acceptable.

10. The design of the newly constructed deck extension across the easterly end of the rear of the house is even with (flush with) the east side of the house, is approximately 2 feet from the side yard property line at its eastern most border, connects to and is an extension of an established deck to the west and provides access to the above ground pool.

11. The placement of the above ground pool at a location abutting the easterly property line is both for convenience of access from the house and placed so as to avoid obstructing access to the septic system/leach field. The result places the long axis of the pool and deck (46.5 feet) a distance of approximately 2 to 4 feet from the side yard property line.

12. Pool water volume will allow for and has been offered to the town as a back up fire department resource should usual water sources prove inadequate during a fire emergency.

13. Decking to surround and abut the westerly and southerly pool sides at a height to match the pool height of 54 inches is proposed. Footprint dimensions on the site plan are imprecise, though the 30 foot length and the 15 foot width of the pool will be accommodated. The diagram submitted indicates the entire structure to be within the side yard setback and approximately 2 to 4 feet from the side property line at its most proximate point.

14. Also proposed is an ancillary structure for the storage of pool and yard accessories/supplies originally presented on the site plan as a 20 x 12 foot structure. During the hearing the applicant revised this to a 16 x 10 foot structure up to 12 feet in height and placed 6 feet from the easterly property line.

15. Septic system access is located approximately 4 feet south of the west end of the newly added deck extension just to the rear of the house. The leach field then follows the line of the rear of the house in a westerly direction ending just prior to the easterly side of the parking area /western most side of the pre-existing deck.

16. The property is an existing small nonconforming but legal parcel. The 77' x 77' property dimensions recorded in the deed result in a parcel of approximately 5621 square feet. The town parcel map records a ¼ acre size or 17424 square feet.

17. The combined coverage area of the garage, parking area, house and original deck constitute 15.2 % of the property if the 17424 square foot figure is used when calculating the total property area.

18. The site plan submitted is inexact in reference property line dimensions, setback distances (including setback from normal mean watermark) and some of the new construction dimensions (specifically, the proposed additional decking around the pool).

This does not meet the requirements set forth per section 702 of the zoning bylaws relating to site plan drawing scale and dimensions.

!9. The size and quasi-permanent nature of the pool are in part responsible for the placement location of the pool and associated decking. It is these that are responsible for the square footage added to the established total property coverage footprint.. The fence height is directly related to this choice as well. All of the preceding choices are of the applicant's creation. The possibility of strict conformity with zoning regulations has not been excluded should other parameters such as pool size and location be altered.

CONCLUSIONS OF LAW AND DECISION

The Board concludes that the submitted property diagram and site plan are inconsistent with approximate measurements made at the time of the site visit, are inadequate in defining setback and stream offset measurements. Additionally, incomplete construction dimensions preclude accuracy in calculating precise square footage data. Further, the Board concludes that the area coverage as a % of property size is at allowable limits prior to the addition of the proposed structures. Any additional structures that result in an expanded footprint would then result in the need for a variance in this area as well. The constructed 8 foot high fence does not meet the criteria set out in Bylaw Section 726; specifically compatibility with adjacent land uses and adequacy of landscaping, screening and setbacks in regard to achieving maximum compatibility and protection of adjacent property. The 8 foot high fence is inconsistent with the character of the neighborhood and may negatively impact the adjacent neighboring property values.

The Site Plan Review is therefore not approved for the fence as constructed. The fence can meet these standards and be brought into compliance by reducing its height to not more than 6 feet and changing it to a neutral color.

The already constructed deck extension across the rear of the house and the proposed deck additions around the westerly and southerly sides of the pool are designed to provide access to the above ground pool. Both the pool and decks are set inside of the side yard setback requirements.

The Board concludes that the required findings for approval of the needed variances are not met. While the property does have unique circumstances of size and topography, any

hardship has been created by the decisions of the applicant to place the pool, deck and fence as proposed. Variance is not required to make a reasonable use of the property; in fact, a reasonable use existed prior to the proposal. Further, the variance would affect the character of the neighborhood and adjacent property.

While the testimony redefining the dimensions and placement of the ancillary structure does meet standards of the bylaw in relation to square footage, height and side yard setback, it is unclear if the 50 foot stream bank buffer is met. If a less than a 200 square foot storage building is constructed, the required stream setback shall be confirmed.

The Board refers the identified violations of Dummerston zoning bylaws to the Zoning Administrator for appropriate resolution (per section 730).

The following members of the Dummerston Development Review Board participated and concur in this decision. The Decision is subject to appeal as provided by Vermont statutes.

Lew Sorenson, Cynthia Wilcox, John Warren, Jack Lilly, and Herbert Rest

Dated: September 4, 2012

DUMMERSTON DEVELOPMENT REVIEW BOARD

Herbert F. Rest
On behalf of the Board