

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

Applicant: Priscilla "Pat" Dautrich
Mailing Address: 483 East-West Road, E. Dummerston, VT 05346
Location of Property: same
Application: to build a one-car garage
Re: DRB Appeal no. 3016V
Date of DRB Hearing: August 21, 2007

The matter came before a duly warned public hearing by notice published in the *Brattleboro Reformer*, August 3, 2007 and by posting at three places in the Town. The applicant posted the Public Notice provided by the Town on August 7, and notified three adjoining property owners on August 8 and 10, 2007.

Present and participating were the following members of the Development Review Board: Patricia Jaquith, Rick Sullivan, John Warren, and Lew Sorenson. Members Sullivan and Warren are alternates on the Board, and were seated as voting members due to the absence of other regular members. Also present at the hearing was contractor John Brunelle representing the applicant.

FINDINGS OF FACT

The Board finds as follows:

1. The applicant proposes to build a garage, 14'x24' in dimension, along the northerly edge of her property. The applicant's site plan shows the structure to be 24' from the rear boundary and 18' from the side boundary along East-West Road.
2. The property is located in a Rural Residential District; Section 220 of the Dummerston Zoning Bylaw (July 6, 2007) applies. Also applicable are Sections 615 and 728 of the bylaw.
3. The applicant applied for a zoning permit for the garage on July 23, 2007. The applicant concurrently applied for a setback variance to allow the garage. On July 30 the Zoning Administrator denied the application due to insufficient setback distances for the rear and side yard areas; the proposed structure would be 51' less than the required 75' setback from the rear boundary and 22' less than the required 40' setback from the side boundary.
4. The property is a corner lot roughly rectangular in shape with 60 and 105 feet of frontage on East West Road as it turns to cross Salmon Brook at its intersection with Schoolhouse Road. The bulk of the property is below the level of East-West

Road, although the northwesterly corner rises sharply to the road level. Salmon Brook runs south of the property separated from it by the property of Cleon Bolster.

5. The property is occupied by the applicant's residence, a 39'x26' structure, previously owned and recently rebuilt by the applicant's contractor agent. The structure is nonconforming to the bylaw's 50' building setback requirement from East-West Road. The agent testified that as part of the reconstruction he paved the first portion of the drive to the adjacent property to the south and west that crosses the front corner of the subject property and built the substantial retaining wall along the driveway at the northerly property line. He further testified that the retaining wall and landscaping atop it were done with the approval of the Town Road Foreman and that there is not a defined right-of-way or property line separating the subject property and the road.
6. A site visit on August 21, 2007 showed one inaccuracy in the site plan's stated dimensions; the setback along East-West Road shows the distance to the edge of the pavement. It was found by measurement that the edge of the proposed structure would be 25' from the centerline of the road. Section 615 of the bylaw provides that where the exact location and/or width of a road is not determined the setback required shall be measured from the centerline of the road with 25 feet added. Thus, applying this standard there is actually zero setback from the road, and the requested variance at this boundary is 100%. All other dimensions were found to be as stated.
7. The Board has previously ruled that, in the absence of clear language in the bylaw to the contrary, the building front yard setback minimums apply to all road frontages. In applying this ruling to this case the need for variance is unchanged.
8. Potential obstruction of view for traffic was assessed and found not to be an increase from the present situation. Due to the elevation difference along the north property line it is unlikely that the Town would have any future use of the full right-of-way. However, the applicant acknowledges and accepts the hazards resulting from this elevation difference and the close proximity of the driveway and proposed garage site, that will continue to exist particularly during Town snow plowing.
9. There were no objections from the three owners of adjoining property. No testimony other than the applicant's agent was offered at the hearing.
10. There is a fourth adjoining property owner: the Town of Dummerston owns the property across East West Road, to the east of the Dautrich property. While the Town was not notified in accordance with the procedures for notifying adjacent owners, the Town was *ipso facto* notified by the filing of the appeal and the posting at the Town Office.
11. The required Posting Notice by the appellant was made only 14 days prior to the hearing; notification of the adjacent property owners was completed only 11 days

prior to the hearing. The Board finds that in this case the less than 15-day notice is not a substantive deficiency.

12. The Board found as follows on the five requirements of Section 728 for the granting of a variance:
 - a) There are unique physical circumstances...peculiar to the property. The property is very small, approximately 1/3 acre. The topography along the northerly property line is very severe and the westerly portion of the property constitutes a steep hillside. The size and topography of the property create an unnecessary hardship.
 - b) Because of these physical circumstances, there is no possibility that the property can be developed in strict conformity...and that...a variance is necessary for reasonable use of the property. There is no place to build this garage, or any reasonable structure, with the minimum setbacks anywhere on the property. The garage is needed for reasonable use because the present parking area, a paved pad adjacent to the house, is often covered by snow piled up from road clearing. Setting the garage back from the road as proposed will keep the structure from encroaching on lines of sight for drivers on the East-West Road. The only other possible location for a garage would also require variances, would require the granting of an easement for access, would be constricted by the existing septic system, and would be a farther distance from the effective entrances to the house.
 - c) The unnecessary hardship was not created by the appellant. The appellant bought the property in the small size in which it had existed with the residence at this location since prior to Town zoning. Historically this was a larger property prior to the relocation years ago of East-West Road's Salmon Brook crossing.
 - d) The variance...will not alter the essential character of the neighborhood. The property is located Slab Hollow historic settlement, a residential hamlet of small and irregular lots that predate zoning. Many, if not most, parcels setbacks are nonconforming. The proposed garage with reduced setbacks will not be out of character in the neighborhood.
 - e) The variance...will represent the minimum that will afford relief and will represent the least deviation possible form the regulations. As stated above, any other location for the proposed structure would require as much or more in deviations to afford the relief requested. Any other location for the structure would maximize the walking distance from the house. Building a garage on a property that has existed for more than 50 years without one will relieve the hardship that has been endured by previous owners.

CONCLUSION AND DECISION

The five required conditions for granting a variance being found in the affirmative, the Dummerston Development Review Board hereby approves the variance, with the following conditions:

1. Since the rear corner of the garage will encroach on the base of the hillside at the back of the garage, there shall be a retaining wall or some other appropriate means of bank stabilization and erosion control;

2. There shall be adequate means to allow drainage around the side of the structure on the north side adjacent to East-West Road. Any work done within the right-of-way requires Town approval.

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.

Pat Jaquith, Rick Sullivan, John Warren and Lew Sorenson

September 5, 2007

DUMMERSTON DEVELOPMENT REVIEW BOARD

Lew Sorenson, Chair
For the Board

EXHIBITS

1. Zoning Permit and Application and Site Plan #3106
2. DRB Application #3106V
3. Newspaper Public Hearing Notice.
4. Applicant's Certification of Posting and Notice to adjacent property owners
5. Attendance Sign-In
6. Interested Persons Record and Service List