

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

Applicant:	Douglas & Tammy Morton
Location of Property	398 East-West Road Dummerston, Vermont 05346
Mailing Address:	398 East-West Road Dummerston, Vermont 05346
Project:	Attached garage within setback area
Re:	Variance; Zoning Permit Application #3074

This matter came before the Dummerston Development Review Board (DRB) at a public hearing held on November 20, 2007 in the community room of the Dummerston Center church, Dummerston Center, Vermont. Present and participating were DRB members Pat Jaquith, Cindy Wilcox, and Lew Sorenson, chair. The DRB conducted a site inspection on the day preceding the public hearing, attended by members Pat Jaquith, Regina Rockefeller, Lew Sorenson and John Warren, alternate. The applicants, Douglas and Tammy Morton, were present for the site visit inspection and Douglas Morton attended the hearing. No other citizens were present at this DRB hearing.

The public hearing was continued with the applicant's concurrence and without substantive testimony to December 11, 2007 at 7:00 pm at the Town Office because, through no fault of the applicants, timely notice was not provided to abutting property owners and by posting, and because only three DRB members were available. The applicant also indicated he wished to revise the application to reduce the requested variance, but had not yet prepared a revised site plan. Additional mailed notice of the continued hearing was provided by the DRB and the applicant was asked to note the continuance on the posting notice. Present and participating at the December 11th continued public hearing were DRB members Pat Jaquith, Regina Rockefeller, Cindy Wilcox, John Warren (seated as a voting alternate) and Lew Sorenson, chair. Also present were the applicants, Doug and Tammy Morton and abutting property owner Thomas Simeon. The hearing was adjourned following testimony; deliberations of the DRB ensued.

FINDINGS OF FACT

The Board finds as follows:

1. The applicants filed Application for Zoning Permit #3074 on May 16, 2007 for an attached sunroom and 2-car garage accessory to an existing residence at 398 East-West Road. On May 2, 2007, the Zoning Administrator denied the application finding that the proposed construction does not meet the setback requirements of Section 220 of the Zoning Bylaw as the proposed construction would increase the degree of nonconformity by an increase in basal area within the setback area for an already nonconforming lot and structure. On September 26th the applicants filed this application for a variance, and on October 4th submitted additional information to complete their request describing the project as mainly a

- 24'x24' garage, with an unfinished but roofed connecting entry which may not be included depending on cost estimates.
2. At the initial hearing the applicants indicated they wished to modify the proposed development to decrease the requested variance. They submitted amended plans at the December 11th continued hearing. These findings and decision apply to the amended request which is a 20'x30' 3-bay carriage style garage attached directly to the existing residence and aligned with the roof and rear wall of a 1950's addition to the residence. The garage is proposed to be a pole structure open at the front and back and without a concrete floor. The open back would allow exiting cars to circle the east end to the garage and approach the road without backing. According to the applicants' measurements the garage would be set back 24' from the edge of the existing paved road and 34.5' from the roadway's centerline.
 3. The property is located in a Rural Residential District (RR). Section 220 of the Bylaw requires for residential uses a minimum building setback of 50' from the roadway property line (or 75' from the roadway centerline), 40' minimum side yard setback and 75' minimum rear yard setback. The minimum lot area for residential uses is 2 acres, the maximum coverage is 15% and the maximum building height is 35'. Section 255 of the of the Zoning Bylaws provides that a nonconforming structure may be extended, altered or rebuilt after destruction with the approval of the DRB if it finds that the proposed construction will not be more detrimental to the neighborhood or environs than the existing nonconforming structure.
 4. The subject parcel is nonconforming as to size and the residence is nonconforming as to setbacks both from road and the rear property line. The subject parcel is about 0.6 acres in size and is irregular in shape with a frontage of about 340' on East-West Road and an average depth of about 80' at the location of the residence. The property lines, other than the frontage where the residence is located, lay primarily within steep ravines. The parcel is currently occupied by the applicants' single-family residence and a small shed. The residence is served by an on-site well to the rear and northwest of the residence and a septic system located parallel to and behind the proposed garage. The residence is located about 12' from the road with parking to the east of the structure at the location of the proposed garage.
 5. The surrounding neighborhood is residential in character with the hamlet of Slab Hollow less than two-tenths of a mile to the north across the ravine.
 6. The revised requested development authorization will result in a variance of 40.5' to the Bylaw's minimum required 75' building setback as measured from the roadway's centerline, and a variance of 15-27' to the required 75' rear yard minimum setback. A possible adverse affect of the reduced setback from East-West Road can be minimized by having the circular drive behind the garage return to the driveway in front of the garage to limit to one the number of access points onto East-West Road.
 7. The property is also currently occupied by a second primary structure, which until the last couple of years, served as a residence of a Ms Denyou prior to her death; it has since been unoccupied. The applicants testified that while this second structure is on their property, the ownership of the structure itself is in question, and is in the protracted process of being resolved through probate. Further testimony regarding this structure revealed that it is served by no off street parking, a very shallow substandard well and a straight pipe to the ravine rather than septic system. This deteriorating structure sits partially within the road right-of-way, only 14.5' from the centerline. It hinders sight distance and snow piles directly against it from Town's wintertime snow plowing.

8. Irrespective of the requested variance, the Board finds that this second structure is seriously nonconforming in most every regard and should not be approved for occupancy for any use at its current location. However, the Board also finds that, because the ownership is currently beyond the control of the applicants, it would be inappropriate to condition the requested variance on a correction of this problem structure.
9. The applicants' testimony addressed the variance findings required by Title 24 VSA, Section 4464 and Bylaw Section 728. The Board finds that:
 - a. The parcel's small size, shallow depth, and irregular shape, together with the steep ravines that constrict the usable portion of the parcel, constitute a unique hardship for this site that is independent of the Bylaw's setback provisions that apply throughout the district;
 - b. Because of these limitations there is no possibility that the property can be developed with any structural use that conforms to the Bylaw's setback requirements;
 - c. The resulting hardship is due to the physical terrain and dimensions of the property, and not by any action of the applicants;
 - d. The requested variance and proposed development will not alter the character of the neighborhood, will not impair use of adjacent properties and will not be detrimental to the public welfare;
 - e. The requested variance is the minimum that will afford relief to allow a 20' deep garage.
10. One abutting property owner to the east, Thomas Simeon, testified in support of the request and qualifies as an interested person as provided by Title 24 VSA, Section 4461.

CONCLUSIONS OF LAW AND DECISION

1. The variance findings required by Bylaw Section 728 and Vermont Statutes (24 VSA 4464) are met.
2. The proposed addition to the structure will not be more detrimental to the neighborhood or environs than the existing nonconforming structure as provided by Bylaw Section 255.
3. The variance is approved subject to the following conditions, and the Zoning Administrator may issue a correspondingly amended Zoning Permit:
 - a. The development shall conform to the revised request and site plan as submitted December 11th, and included as Exhibit #5.
 - b. The proposed circular drive behind the garage shall return to the driveway in front of the garage to limit to one the number of access points onto East-West Road.

Development Review Board members Pat Jaquith, Regina Rockefeller, John Warren, Cindy Wilcox and Lew Sorenson concurred in this decision. This decision is subject to appeal as provided by Vermont Statute.

Dated: December 31, 2007
DUMMERSTON REVIEW BOARD

Lew Sorenson, Chair
For the Board

EXHIBITS

1. Zoning Permit Application #3044 with Site Plan and Zoning Administrator's denial
2. Development Review Board variance application with additional site plan and October 4 letter to the Zoning Administrator
3. Newspaper legal notice of Public Hearing
4. Applicants' Certification of Notice
5. Applicants' revised site plan and perspective drawing submitted at DRB December 11 public hearing