

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

Applicant: Sandra Ellison
Mailing Address: 55 East West Road
Dummerston, VT.
Location of Property: 55 East West Road
Dummerston, VT.
Application: #3125
Re: Setback variance
Date of DRB Hearing: April 15, 2008

The matter came before a duly warned public hearing of the Dummerston Development Review Board (DRB) held on April 15, 2008. The DRB conducted a site inspection preceding the public hearing that was held at the Dummerston Town Offices, Dummerston Center, Vermont.

The matter was publicly warned in a notice, dated March 27, 2008, from Lew Sorenson, chair of the DRB, and published in the Brattleboro *Reformer* on said date. The applicant posted the Public Notice provided by the Town on 3/31/08, and notified adjoining property owners on 3/27/08.

Present and participating at the site visit and the hearing were the following members of the Development Review Board: Lew Sorenson (Chair), Cindy Wilcox, Patricia Jaquith, Regina Rockefeller, Herbert Rest, Rick Sullivan, John Warren. Msrs. Sullivan and Warren are alternates on the Board. Sandra Ellison attended the site visit, the hearing and presented the case. No other interested parties attended the site visit or participated in the hearing.

FINDINGS OF FACT

The Board finds as follows:

1. The property is located in a Rural Residential District. Sections 220, 255 and 728 of the Dummerston Zoning Bylaw (July 6, 2007) apply.
2. The application proposes to build a replacement structure for a preexisting nonconforming garage, workshop and porch presently in place. The existing nonconforming structure predates the zoning sideyard setback requirements.
3. The original permit application was denied on March 6, 2008, because the proposed structure does not meet the Section 220 setback requirements.
4. The sideyard setback of the current vs. replacement structure, currently 40 inches

from the side property line, would increase to 44 inches at the rear (southwesterly corner) and would increase from 7 feet to 8 feet at the front (northwesterly corner).

5. The replacement structure plan proposes a 5 foot north-south and a 4 foot east-west dimension increase requiring a site shift of several feet to approximately maintain the established current structure setbacks.
6. Existing property physical circumstances include:
 - The location of the water supply line from well to house is positioned south to north in a line roughly paralleling along and in close approximation to the easterly side of the current and proposed replacement structure.
 - The locations of the septic holding tank/leach field are directly behind the house, east of the proposed replacement structure and extend to locations approximately midway between the house and the easterly property line (in an east- west direction from approximately the front of the house to the rear of the current garage/workshop structure).
7. The Board has received no objections or concerns from the identified adjoining property owners as of the hearing date.
8. The required Posting Notice by the appellant was made 16 days prior to the hearing as stated on the Posting Notice.

SECTION 728: REQUIREMENTS FOR VARIANCE

9. The Board finds as follows as to the five requirements for the granting of a Variance:
 1. There are unique physical circumstances...peculiar to the property. This finding is not in the affirmative. There are other accessible locations on the property that would meet all zoning setback requirements.
 2. 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. This finding is not in the affirmative. The physical circumstances of the property allow for alternative development possibilities that conform to zoning regulations.
 3. The unnecessary hardship was not created by the appellant. This finding is not in the affirmative. It is the appellant's desire to site the replacement structure at the present nonconforming site.
 4. The variance...will not alter the essential character of the neighborhood. This finding is in the affirmative.
 5. The variance...will represent the minimum that will afford relief and will represent the least deviation possible form the regulations. This finding is non applicable as three of the above conditions are not met.

SECTION 255 NON CONFORMING USE OR STRUCTURE

10. The Board finds as follows:

1. A nonconforming use or structure may be extended, altered or rebuilt after destruction with approval of the DRB if there is a finding that the extension or alteration will not be more detrimental to the neighborhood or environs than the existing nonconforming structure or use and will not increase the degree of nonconformity.

2. The finding allowed by Section 225 is in the affirmative.

- The 20 square foot increase in "footprint" size was deemed insignificant and offset by the increase in sideyard setback.
- The sideyard setback is limited by the need to have access to the waterline located immediately to the east of the new structure.
- Relocation of the structure to a site east and/or to the rear of the house site is complicated by the septic/leach field locations and results in aesthetic and functional issues that detract from the usability of the structure.
- Replacement building design and location represent a minimal change from the current structure and will not alter the essential character of the neighborhood.

CONCLUSION AND DECISION

The conditions for approval of the request under Section 255 are met. The Dummerston Development Review Board hereby approves the rebuilding of the nonconforming structure with the described modifications and at the location identified in the site plan.

Since the proposed development is authorized by the Board pursuant to Section 255, a variance to the setback requirements is not required.

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

Dated: April 29, 2008
DUMMERSTON REVIEW BOARD

Herbert F. Rest
For the Board

EXHIBITS

1. Zoning Permit Application # 3125 and Site Plan dated 3/06/08
2. DRB Application dated 2/28/08
3. Newspaper Public Hearing Notice 3/27/08.
4. Applicant's Certification of posting and adjoining property owner notice dated 4/07/08
5. Applicant's additional 4/15 site plan showing septic system to north of house
6. Attendance Sign-In