

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

Name of Applicant/Owner: John and Karen Abel  
Location of Property: 434 Schoolhouse Road  
East Dummerston, Vermont 05346  
Mailing Address: 434 Schoolhouse Road  
East Dummerston, Vermont 05346  
Application Number: #3150 - Variance

The matter came before a warned public hearing of the Dummerston Development Review Board (DRB) held on July 15, 2008 at the Dummerston Town Offices, Dummerston Center, Vermont. The hearing was preceded by a site inspection attended by the applicants, a neighbor Dan Brown and Board members, Regina Rockefeller, Pat Jaquith, John Warren and Lew Sorenson.

Present and participating at the hearing were the following members of the Development Review Board: Patricia Jaquith, Regina Rockefeller, Lew Sorenson, and alternate John Warren who was seated as two regular members were absent. Also present were: the applicants, John and Karen Abel; an abutter, Dan Brown; and the Zoning Administrator, Gina Faro.

The hearing was adjourned followed by deliberations and motions.

**FINDINGS OF FACT**

The Board finds as follows:

1. The applicants filed Application for Zoning Permit #3150 on June 12, 2008 for retroactive approval of a six-foot high fence within the front and sideyard setback areas of their residential property at 434 School House Road. The application followed a complaint to Zoning Administrator who determined that the fence constitutes a structure as defined by the Zoning Bylaw and therefore is subject to the Bylaw's permitting requirements. The Zoning Permit application was not approved by the Zoning Administrator on June 18, 2008 finding the fence not conforming to setback requirements. This application to the DRB was filed on June 24, 2008 and includes check marks indicating it is for an appeal from the decision of the Zoning Administrator, an application for a Conditional Use Permit and an application for a Variance. The Board treated the application as a variance request only as the Conditional Use Permit provisions are not applicable and the applicants have not claimed that the Zoning Administrator acted in error.
2. The property is located in a Rural Residential District (RR). The property is an undersized nonconforming 0.6 acre, rectangular shaped level lot in a relatively dense historic residential hamlet called "Slab Hollow" which was once a thriving 19<sup>th</sup> century center of local industry and commerce. The applicants' house was built in the 1840s and most recently was the subject of a small addition, which received a sideyard variance approval from this Board (permit #3112).

3. The Zoning Bylaw regulates “Land Development” as defined in the Vermont Statute and the Bylaw itself, and includes structures. The Bylaw defines structures to include fences over 4 feet in height. Section 220 of the Bylaw requires a 50-foot building setback from the front property line and a 40-foot sideyard setback. Section 615 provides that where the road right-of-way is less than 50 feet the front setback is measured from the roadway centerline and 25 feet is added, bringing the setback in this case to 75 feet from the centerline.
4. The applicants request approval of a recently installed fence at the southeasterly corner of the property. The six-foot white vinyl fence is 18 feet from the roadway centerline and runs parallel to the road a distance of 24 feet. The fence also runs back along the easterly property line a distance of six feet set back 3 feet from the side property line. The requested variance therefore is for a front yard reduction of 57 feet and a sideyard variance of 37 feet.
5. The applicants testified that they have lived in their home for 35 years and have been happy with their neighborhood, but during the past several years unsightly cars, snowmobiles, trucks and plowblades have been stored on a neighbor’s property across the street. The fence is to screen this area from key areas of the home, both interior and exterior. Before having the fence installed the applicants testified that they consulted with their builder who didn’t identify any permit requirements.
6. The applicant addressed the variance findings enumerated in 24 VSA Section 4469 and Bylaw Section 728. They feel that the unsightly storage has caused a hardship for the reasonable use of their property, that the hardship is not of their own making but caused by the neighbor’s storage, that the fence is in keeping with the neighborhood’s character, and a fence of 4 feet would be insufficient to accomplish the screening.
7. The abutting neighbor to the west, Dan Brown, testified in support of the variance. The Zoning Administrator testified that screening could be achieved with landscaping materials and that the vehicle storage isn’t unduly unsightly.
8. The Board finds that the hardship described by the applicants does not meet the first variance criteria of a unique physical circumstance or condition of the applicants’ own property, nor is a reasonable use of the property precluded as provided in the second criteria. Had this application been considered prior to installation of the fence the Board might well have found that reasonable screening could be achieved with a combination of a lower fence and landscaping materials similar to that which exists along the applicants’ side property line.
9. The Board further finds, however, that the intent of Zoning Bylaw provisions are less than clear as to this development and fences in general. Full enforcement of the Bylaw results in all fences over 4 feet in height be setback from property lines in the same manner as a building; fences by their nature tend to be at the edge of property lines, fields or use areas, not 40-100 feet inside of the edge. The intent may instead have been that higher fences be reviewed for other considerations. Further, a strict reading of the “Area, Dimensional and Coverage Requirements” of Section 220 may result in front yard setbacks applying only to buildings rather than all structures as the words read “Building setback minimum”.

10. Notice provisions required by 24 VSA Section 4464 for DRB hearings are shared between the Town and the applicant as set out in the DRB's Rules of Procedure. The applicant is responsible for posting the property and abutter notification. The applicants in this case posted the property 9 days prior to the hearing and provided only 4 days notice to abutters rather than the required 15 days. The Board finds this to be a substantive defect in notice and a new hearing and notice would be required if the Board were to approve the application.
11. For purposes of appeal, the applicants are determined to be "interested persons" as defined in 24 VSA Section 4465(b).

### **CONCLUSIONS OF LAW AND DECISION**

1. The requirements of 24 VSA 4464 and Zoning Bylaw Section 728 are not met and the requested Variance is therefore denied.
2. The Board urges the Planning Commission and Selectboard to review the Bylaw provisions as they apply to setbacks for fences at the earliest possible time and clarify the requirements for fences over 4 feet in height.

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 statute.

Pat Jaquith, Regina Rockefeller, John Warren and Lew Sorenson  
Dummerston Development Review Board

Dated: July 22, 2008

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For the Board, Lew Sorenson, Chair

### **EXHIBITS**

Variance, Zoning Permit Application #3150  
John and Karen Abel

1. Application for Zoning Permit #3150 with site plan dated June 12, 2008
2. Denial form from Zoning Administrator (on back of Zoning permit)
3. DRB Application for Variance dated June 24, 2008
4. Newspaper Legal Notice
5. Applicants' Certification of Notice
6. Attendance Sign in Sheet for Hearing