TOWN OF UNDERHILL
APPLICATION OF LAURA DIPIETRO
FOR A VARIANCE FROM THE FRONT LOT LINE SETBACK
TO CONSTRUCT A CHICKEN COOP
FINDINGS AND DECISION

In re: Laura DiPietro
30 Cloverdale Road
Underhill, VT 05489

Docket No. DRB-08-05: Laura DiPietro

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Laura DiPietro's hearing application for a variance from front lot line setback requirements for the construction of a chicken coop onto a preexisting, non-complying structure on her property at 30 Cloverdale Road in Underhill, VT.

1. On March 24, 2008, Laura DiPietro submitted a building permit application for the construction of a chicken coop onto a preexisting, non-complying structure on her property at 30 Cloverdale Road in Underhill, VT. A variance hearing request was submitted by Laura DiPietro on April 11, 2008. A copy of the application is available at the Underhill Town Hall.

2. By April 28, 2008, notice of the variance hearing on the proposed DiPietro variance application was posted at the following places:

   a. The Underhill Town Clerk's office;
   b. The Underhill Center Post Office;
   c. The Underhill Flats Post Office;
   d. The Town of Underhill website.

3. On May 3, 2008, notice of a variance hearing was published in the Burlington Free Press.

4. On May 7, 2008, a copy of the notice of a variance hearing was mailed via certified mail to the applicant, Laura DiPietro, 30 Cloverdale Road, Underhill, VT 05489 and to the following owners of properties adjoining the property subject to the application:

   a. Tibbits, 33 Morgan Road, Jericho, VT 05465
   b. King, 949 VT Route 15, Underhill, VT 05489
   c. Streator, P.O. Box 303, Underhill, VT 05489
   d. Roberge, 928 VT Route 15, Underhill, VT 05489

e. Martin, 4 Beaverbrook Hill, Underhill, VT 05489
f. Moffatt, 18 Cloverdale Road, Underhill, VT 05489
g. Ellis, P.O. Box 94, Underhill, VT 05489

5. As the notice of the variance hearing did not meet the statutory notice requirement, the hearing scheduled for May 19 was cancelled and rescheduled for June 9, 2008. On May 19, 2008, a copy of the notice of a variance hearing was mailed via certified mail to the applicant, Laura DiPietro, 30 Cloverdale Road, Underhill, VT 05489, those listed above in (4).

6. By May 20, 2008, notice of the variance hearing on the proposed DiPietro variance application were posted at the following places:

   a. The applicant's property, 30 Cloverdale Road;
   b. The Underhill Town Clerk's office;
   c. The Underhill Center Post Office;
   d. The Underhill Flats Post Office;
   e. The Town of Underhill website.

7. On May 21, 2008, notice of a variance hearing was published in the Burlington Free Press.

8. The variance hearing was scheduled to commence at 6:30 PM on June 9, 2008.

9. Present at the combined hearing were the following members of the Development Review Board:

   - Chuck Brooks
   - Peter Seybolt
   - Penny Miller
   - Matt Chapek
   - Charlie Van Winkle
   - Scott Tobin, Chair

   Kari Papelbon, Zoning Administrator, also attended the meeting.

10. At the outset of the hearing, Chairperson Scott Tobin explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Interested parties who spoke at the hearing were:

    - Laura and Tom DiPietro, 30 Cloverdale Road, Underhill, VT
    - Sally Martin, 4 Beaverbrook Hill, Underhill, VT

11. During the course of the hearing the following exhibits were submitted to the Development Review Board:

1. A staff report sent by Zoning Administrator Kari Papelbon to the Development Review Board and Laura DiPietro;
2. Laura DiPietro's Variance Hearing Request;
3. A copy of Laura DiPietro's building permit application for the addition of a chicken coop onto a pre-existing, non-complying building;
4. A copy of Laura DiPietro's variance request justification;
5. A copy of the site plan;
6. A copy of the parcel map for CD030.

These exhibits are available in the Laura DiPietro, CD030 variance file at the Underhill Zoning Office.

II. FINDINGS

Background

The Minutes of the meetings written by Kari Papelbon are incorporated by reference into this decision. Please refer to these Minutes for a summary of the testimony.

Based on the application, testimony, exhibits, and other evidence the Development Review Board makes the following findings:

1. The subject property, 30 Cloverdale Road, lies in the Rural Residential zoning district.

2. The Applicant, Laura DiPietro, is applying for a variance from the 75-foot front lot line setback requirement for a proposed chicken coop off of a preexisting, non-complying structure on her property at 30 Cloverdale Road in Underhill, Vermont.

3. Per §IV (E)(2) of the Underhill Zoning Regulations, "Accessory uses or buildings …shall not be closer to the front lot line than the distance from the front lot line to the nearest point of the primary dwelling or shall not be closer to the front lot line than 75 feet."

4. The proposed chicken coop will be constructed onto the side of a preexisting structure that is closer to the front lot line than the existing primary dwelling and does not meet the 75-foot front lot line setback requirement.

5. Per §III (N) of the Underhill Zoning Regulations, "A Non-Complying Structure shall not be extended, expanded, modified or moved without prior approval of the Zoning Administrator, who shall determine that such structural alterations shall be in compliance with the dimensional requirements of these regulations. Proposed changes determined to be not in compliance with zoning requirements need prior approval of the [Development Review Board]."

6. The Board finds that since the proposed chicken coop to be constructed onto the side of a non-complying building will not meet the front lot line setback requirements, a variance from the 75-foot setback requirement is needed.

7. Variances must meet the following requirements per 24 V.S.A. §4469:

   a. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

      The lot at 30 Cloverdale Road has a 75' front setback. Within this setback are 2 structures which pre-exist Underhill zoning requirements. The chicken coop is proposed to be constructed onto the side of one of these structures. The land beyond the setback slopes down to a stream, and this area is within the 100 year flood plain. There is also undulating topography to the north of the house which prevents a structure from being constructed there.

   b. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

      Because of the natural conditions listed in §II (7)(a), the only available and reasonable location for the proposed chicken coop is as an attachment to the existing barn structure.

   c. Unnecessary hardship has not been created by the appellant.

      The structures are pre-existing, and the locations of the 100 year flood plain and natural slopes of the land have not been created by the applicant.

   d. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

      The variance will not alter the essential character of the neighborhood, substantially or permanently impair the appropriate use or development of the adjacent property, reduce access to renewable energy resources or be detrimental to the public welfare. Other residences in the area have chickens and geese, and other livestock are on the road.

e. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

Authorization of this variance will allow the applicant to continue using the structure as a barn. A variance of 23 feet from the front lot line is the minimum required for this request.

III. DECISION

Based upon the findings above, the Development Review Board grants approval for the 23-foot variance for the construction of chicken coop onto the preexisting, non-conforming building as presented at the hearing.

Dated at Underhill, Vermont this 3rd day of July, 2008.

Scott Tobin

Scott Tobin, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. §4471 and Rule 5 (b) of the Vermont Rules for Environmental Court Proceedings. No documents shall be recorded until Aug. 2, 2008, when the 30-day appeal period has expired.