TOWN OF UNDERHILL
APPLICATION OF JESSILYN DOLAN AND MIKE BERT
FOR A VARIANCE FROM THE SIDE LOT LINE SETBACK
FOR A DRIVEWAY
FINDINGS AND DECISION

In re: Jessilyn Dolan and Mike Bert
393 Goose Pond Road
Fairfax, VT 05454

6 Roy Drive
Underhill, VT 05489

Docket No. DRB-08-10: Dolan/Bert

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Jessilyn Dolan's and Mike Bert's hearing application for a variance from side lot line setback requirements for the relocation of a driveway on their property at 6 Roy Drive in Underhill, VT.

1. On November 14, 2008, Jessilyn Dolan submitted a Variance Hearing Request for the relocation of a driveway on her property at 6 Roy Drive in Underhill, VT. A copy of the application is available at the Underhill Town Hall. A copy of the notice of a variance hearing was submitted to Ms. Dolan at the time of her request.

2. By November 14, 2008, notice of the variance hearing on the proposed DiPietro variance application was posted at the following places:

   a. The Applicant's property at 6 Roy Drive;
   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.

3. On November 15, 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 site visit and variance hearing was mailed via certified mail to the following owners of properties adjoining the property subject to the application:

   a. Colby, 2 Roy Drive, Underhill, VT 05489
   b. Greene/Verge, P.O. Box 204, Underhill, VT 05489

c. Bishop, 33 Duffy Hill Road, Underhill, VT 05489
d. Danis, 898 VT Route 15, Underhill, VT 05489
e. Roy, Box 294, Allenwood, NJ 08720

Notice was hand-delivered on November 14, 2008 to Ms. Nanette Rogers of the Town of Westford.

5. The site visit occurred at 6 Roy Drive, Underhill, VT on Sunday, November 30 at 9:00 AM. The variance hearing was scheduled to commence at 6:15 PM on Monday, December 1, 2008 at the Underhill Town Hall.

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

   - Chuck Brooks
   - Stan Hamlet
   - Penny Miller
   - Scott Tobin, Chair

   Kari Papelbon, Zoning Administrator, also attended the meeting. Board Member Alternate Deb Shannon attended part of the meeting but did not cast a vote.

7. 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:

   - Brad Holden, Vermont Land Surveyors, 4040 Williston Road, South Burlington, VT (consultant for Jessilyn Dolan and Mike Bert)
   - Mike Bert, 393 Goose Pond Road, Fairfax, VT (6 Roy Drive, Underhill, VT)
   - Bob Williams, 12 Roy Drive, Underhill, VT

8. 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, Jessilyn Dolan and Mike Bert, and Brad Holden;
   2. Jessilyn Dolan's Variance Hearing Request;
   3. A copy of the variance request justification submitted by Brad Holden;
   4. A copy of the site plan;
   5. A copy of the parcel map for RD006;
   6. A copy of the letter from Joe Colby, 2 Roy Drive, dated 11/24/08.

These exhibits are available in the Dolan/Bert, RD006 variance file at the Underhill Zoning Office.

II. FINDINGS

Background

The Minutes of the meeting 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, 6 Roy Drive, lies in the Rural Residential zoning district.

2. The Applicants, Jessilyn Dolan and Mike Bert, are applying for a 19-foot variance (in an envelope 75-feet long) from the 20-foot side lot line setback requirement for a proposed new driveway on their property at 6 Roy Drive in Underhill, Vermont.

3. Per §VI (E)(2) of the Underhill Zoning Regulations, "Accessory uses or buildings, parking areas and driveways shall be constructed not less than 20 feet from side and rear lot lines."

4. The current drive to the rear of the lot, constructed prior to the Applicants' purchase, is less than the required 20 feet from the side lot line. This drive leads to a plateau where a house is proposed. Due to a large amount of ledge in the center of the lot, a variance is required for the driveway.

5. A small amount of ledge removal will be necessary to construct the driveway to Road Policy specifications. The removal will utilize a pneumatic hammer rather than blasting.

6. The Board recognizes that the driveway design requires Selectboard approval prior to construction.

7. Neighbor concerns are for drainage and one neighbor was concerned about the driveway possibly being constructed on his lot. The Board finds that drainage plans, with the suggestion that they show the proposed driveway pitched away from 2 Roy Drive to allow drainage to flow toward the ledge and an existing ditch, should be submitted with the driveway design to the Selectboard for their approval. The Board also finds that during a site visit conducted the day prior to the hearing that a small disturbed area on the neighbor's property has been seeded and mulched, and that the proposed driveway will not extend onto the neighbor's property.

8. 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.

A very large outcrop of ledge extends from the south boundary to the area where the variance is being proposed. This physical feature is the determining factor for this variance request. This proposed driveway route would creat the least amount of impact on the property.

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.

Due to the size of this ledge outcrop it would not be feasible, although it would not be impossible, to blast and remove this large outcrop in order to construct the driveway within setback requirements.

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

No unnecessary hardship has 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.

If authorized this variance would not alter the essential character of the neighborhood. Large ledge outcrops are prevalent in this neighborhood, having to destroy a major portion of this outcrop would greatly diminish the character of this lot. (The Board also recognizes the safety concerns that would arise with the blasting that would be required if the variance was denied).

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.

The variance area which is approximately 75 feet long would be the minimum area in order to make the final turn of the proposed driveway and avoid large amounts of ledge removal.

III. DECISION

Based upon the findings above, the Development Review Board grants approval for the 19-foot variance in a 75-foot-long "envelope," the exact location within such envelope to be determined by the consultant, along the side property line shared with 2 Roy Drive for the construction of a driveway as depicted on the site plan dated November 2008 and prepared by Brad Holden.

Dated at Underhill, Vermont this 12th day of December, 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 January 11, 2008, when the 30-day appeal period has expired.

Received for record January 12, 2009 at 12:00 P.M.
Attest: , Town clerk