TOWN OF UNDERHILL
APPLICATION OF SHANNON AND MALACHI MCCAULLEY
FOR A VARIANCE FROM THE SIDE LOT LINE SETBACK
TO CONSTRUCT A FENCE
FINDINGS AND DECISION

In re: Shannon and Malachi McCaulley
424 VT Rte. 15
Underhill, VT 05489

Docket No. DRB-09-06: McCaulley

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding concerns Shannon and Malachi McCaulley's request for a variance from side lot line setback requirements for the construction of a fence connected to the preexisting, non-complying house on their property at 424 VT Rte. 15 in Underhill, VT.

1. On May 11, 2009, Shannon McCaulley submitted a building permit application for the construction of a fence to be connected to the preexisting, non-complying house on her property at 424 VT Rte. 15 in Underhill, VT. As the proposed fence did not meet setback requirements, the application was referred to the Development Review Board for a variance hearing upon request of the Applicants. A copy of the application is available at the Underhill Town Hall.

2. By May 28, 2009, notice of the variance hearing on the proposed McCaulley variance request was posted at the following places:

   a. The Applicants' property at 424 VT Rte. 15;
   b. The Underhill Town Clerk's office;
   c. The Underhill Center Post Office;
   d. The Underhill Flats Post Office;
   e. The Deborah Rawson Memorial Library;
   f. The Town of Underhill website.

3. On May 21, 2009, notice of a variance hearing was published in the Mountain Gazette.

4. Between May 21 and May 23, 2009, a copy of the notice of a variance hearing was provided by hand to the Applicants and to following owners of properties adjoining the property subject to the application:

   a. Village Service, 426 VT Rte. 15, Underhill, VT 05489
   b. Girouard/McDermid, 14 Meadow Lane, Underhill, VT 05489
   c. Morse, 18 Meadow Lane, Underhill, VT 05489
   d. Jacobs, 16 Harvest Run, Underhill, VT 05489
   e. Manning, 421 VT Rte. 15, Underhill, VT 05489
   f. Jennings, 423 VT Rte. 15, Underhill, VT 05489

5. A site visit was scheduled to begin immediately following the site visit scheduled for 6:00 PM on June 15, 2009. The variance hearing was scheduled to begin immediately following the site visit.

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

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

   Kari Papelbon, Zoning Administrator, also attended the meeting.

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:

   - Shannon McCaulley, 424 VT Rte. 15, 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 and Shannon and Malachi McCaulley;
   2. Shannon McCaulley's building permit application for the fence (dated 5-11-09);
   3. A copy of the Plat of Survey for the parcel (dated 5-28-91);
   4. A copy of the site plan;
   5. A copy of the parcel map for VT424;
   6. A copy of the hearing notice published in the Mountain Gazette (dated 5-21-09);
   7. A copy of the memo from ZA Papelbon to the Selectboard;
   8. A copy of the Selectboard minutes approving the waiver of hearing fees;
   9. Updated Proposed Findings of Fact.

   These exhibits are available in the McCaulley, VT424, 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, 424 VT Rte. 15, lies in the Residential zoning district.

2. The Applicants, Shannon and Malachi McCaulley, are applying for a variance from the 15-foot side lot line setback requirement for a proposed fence connected to the preexisting, non-complying house on their property at 424 VT Rte. 15 in Underhill, Vermont.

3. Per §V (E)(2) of the Underhill Zoning Regulations, "Accessory uses or buildings ...shall be constructed not less than 15 feet from the side and rear lot lines."

4. The definition of a structure in the Underhill Zoning Regulations is "An assembly of materials for occupancy or use including, but not limited to a building, mobile home or trailer, wall, fence, billboard or sign."

5. The proposed fence will be constructed onto the side of the preexisting house that is closer to the side lot line than the district requirement (approximately 3 feet).

6. The Board finds that since the proposed fence to be constructed onto the side of the non-complying house will not meet the side lot line setback requirements, a variance from the 15-foot setback requirement is needed.

7. The proposed fence will be 6 feet tall.

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.

      The lot at 424 VT Rte 15 has a 3' side setback. The house pre-exists Underhill zoning requirements. The shed on the property is 9' from the house, removing the possibility of relocating a fence. In addition, the lot size is 0.38 acres, below district minimum of one acre. Therefore as a pre-existing, non-conforming lot, the Applicants have no other way to develop the lot.

   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 aforementioned conditions, the only available/ reasonable location for the fence is as an attachment to the existing side of the house. The Applicants are proposing to add a 24' x 48' cedar fence onto this building for the safety of their dog.

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

      The house and shed are pre-existing (built in the 1940s), and the original configuration of the lot predates the local inception of zoning.

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. Many neighbors also have fences for animals on the busy 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 applicants to ensure the safety of their dog at a minimum size fence for her size. A variance of 12 feet from the side lot line is the minimum required for this request. KLP

III. DECISION

Based upon the findings above, the Development Review Board grants approval for the 12-foot variance for the construction of a fence onto the preexisting, non-conforming house as presented at the hearing.

Dated at Underhill, Vermont this 26th day of June, 2009.

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 JULY 26, 2009, when the 30-day appeal period has expired.