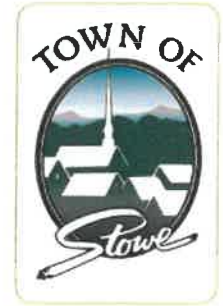


TOWN OF STOWE
DEVELOPMENT REVIEW BOARD
Findings of Fact & Conclusions of Law



PROJECT: 6380

SUBJECT PROPERTY: 2481 Nebraska Valley Road #05-020.010

PROPERTY OWNER/APPLICANT:

Jon Hanson
2481 Nebraska Valley Road
Stowe, VT 05672

APPLICATION:

The Applicant, Jon Hanson (herein referred to as the "Applicant"), request a variance of the front yard setback in order to construct a 60' x 26' single-family dwelling. As proposed, the dwelling will be located to meet the required sides and rear setbacks but is sited 35' from the centerline of the town highway, or approximately 10' as measured from the highway right-of-way. The requested variance will allow the Applicant to construct a single-family dwelling outside of the Flood Hazard Overlay District (FHOD). The subject lot, consisting of ±1.8 acres, is a pre-existing small lot as defined in the regulations. The application has been reviewed by the Development Review Board (DRB) under the dimensional requirements and variance criteria of the Town of Stowe Zoning Regulations (as adopted on October 9, 2018). The Development Review Board's procedural history and relevant findings are attached.

REVIEW PROCESS:

(Application materials, hearing notices, meeting minutes on file at the Stowe Town Office.)

An application for variance approval was filed by Applicant Jon Hanson on September 23, 2020. The application was accepted as administratively complete by Town of Stowe Zoning Director Sarah McShane and referred to the Development Review Board for a public hearing. A public hearing of the DRB was scheduled for October 20, 2020 and warned by the Zoning Director in accordance with Section 2.14 of the regulations and 24 V.S.A. §4464. The hearing notice was published in the Stowe Reporter on October 1, 2020. The Applicant submitted a completed certificate of service in accordance with Section 2.14(1)(B).

The public hearing to consider the application convened on October 20, 2020 via virtual meeting hosted by Zoom, with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. Members who participated in the review included: F.Aumand III, D.Clymer, P.Roberts, C.Walton, L.Wasserman, T.Hand, A.Volansky.

The following persons attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Applicant Jon Hanson, 2481 Nebraska Valley Road, Stowe, VT 05672

The following materials were submitted in support of the application and entered into the hearing record:

1. Town of Stowe Development Application, dated 08/01/2020;
2. FIMA Firmette showing flood zones, no date;
3. Hand-drawn site plans (2), no date;
4. Overall Survey/Site Plan showing adjacent lots, revised 6/16/2020;
5. Floor Plans, dated 9/24/2020;

6. Elevation Drawings (2 pages), no date;
7. Prior DRB Decision Project 3412, dated 6/12/2007;

The DRB adjourned the hearing that evening, following the submission of testimony and evidence, marking the start of the 45-day period for the issuance of written findings and a decision.

FINDINGS OF FACT & CONCLUSIONS OF LAW- The Applicant’s request for variance approval was reviewed by the Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (as adopted on October 9, 2018), including the following:

- Section 2- Administration and Enforcement
 - Section 2.12 Variances
 - Section 3- General Regulations
 - Section 4- Specific Use Standards
 - Section 5- Zoning Districts
 - Section 6- Uses, Dimensional Requirements and Density
1. **Zoning District.** The subject parcel is located within the Rural Residential 5 (RR5) Zoning District as shown on the Official Town of Stowe Zoning Map (as adopted on October 9, 2018).
 2. **Lot Area, Lot Width.** The subject lot consists of ±1.8 acres and approximately 200’ in width. The pre-existing parcel is undersized for the district as the RR5 district requires a minimum of 5-acres minimum lot size.
 3. **Setbacks.** Setbacks in the RR5 District are 70 ft front, 75 ft side, and 75 ft rear. Per Section 3.3(A)(2) *“The Zoning Administrator shall not require the applicant to seek a variance from the DRB as long as the proposed setbacks comply with those specified for the district nearest in size to the lot (e.g., a 1.1 acre approved lot in RR5 would not require a variance if the construction will meet the set-back requirements of RR1; a lot smaller in area than 20,000 sq. ft. in the VR40 would not require a variance if construction will meet the set-back requirements for VR20).”* As such, given the lot is ±1.8 acres, the setbacks of the RR2 district can be applied; 60 ft front, 50 ft side, and 50 ft rear

 The Applicant requests a variance to the front yard setback in order to construct a 60’ x 26’ single-family dwelling. As proposed, the dwelling is sited to meet the sides and rear setbacks but in order to avoid construction within the mapped Flood Hazard Overlay District, requests a variance of 40’- reducing the setback to 10’ as measured from the town highway right-of-way.
 4. **Maximum Building Coverage.** Does not apply to the RR5 district,
 5. **Height.** The maximum building height in RR5 is 28’ feet. The regulations define building height as the *“Vertical distance measured from the average elevation of the proposed finished grade at the front or rear of the building to the highest point of the roof for flat and mansard roofs, and to the average height between the highest ridge and its contiguous eave for other types of roofs. On sloping sites the height will be measured on the uphill side.”* The proposed building height is 28’ to the roof peak.

SECTION 2.12- VARIANCE CRITERIA: The DRB may grant a variance and render a decision in favor of the appellant only if all the following facts are found, and the findings are specified in its written decision:

- 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 these regulations in the neighborhood or district in which the property is located;*
- 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 these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;*
- C. *The unnecessary hardship has not been created by the appellant;*
- 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; and*
- E. *The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.*
 - The Miller Brook and associated flood hazard area encompass portions of the parcel.
 - The Nebraska Valley Road Town highway right-of-way creates the southern property line.
 - The parcel is generally rectangular in shape.
 - The natural occurrence of flooding is a physical condition or constraint that encumbers the parcel.
 - Rear portions of the parcel are steep and cannot be developed.
 - The ±1.8-acre parcel is undersized for the district it is located in. The minimum lot size in the RR5 district is five (5) acres.
 - If the Applicant developed a single-family dwelling in accordance with the front setback requirement, 60' as measured from the town highway right-of-way, the dwelling would be located within the Flood Hazard Overlay District. Under the Town of Stowe Zoning Regulations, new buildings and dwellings are allowed to be constructed within the Flood Hazard Area but are required to be elevated to meet minimum FEMA standards.
 - The Town of Stowe Town Plan discourages development within the mapped floodplain.
 - During the hearing the Applicant testified that the lowest floor elevation is approximately 891' or two (2) feet above the road surface.
 - Many of the dwellings along Nebraska Valley Road do not conform to the front setback requirements.
 - During the hearing the Applicant testified that the dwelling could be "pushed back" approximately five (5) feet towards the flood hazard district.

DECISION

On a motion by C.Walton, seconded by P.Aumand III, the Development Review Board hereby approves Project 6380 based upon the foregoing Findings of Fact and concludes the proposal as presented in

application dated 8/1/2020 and supporting materials meets the variance criteria set forth in the Stowe Zoning Regulations, as adopted on October 9, 2018, subject to the following conditions of approval:

1. This project shall be completed according to the plans hereby approved. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator's attention, prior to its enactment, for a determination if an amendment is required.
2. All relevant prior conditions of approval, unless amended herein, remain in full force and effect.
3. Prior to the issuance of the zoning permit, the Applicant must complete the following:
 - Obtain a driveway entrance permit from the Department of Public Works;
 - Obtain necessary approvals for all proposed development, as defined under Section 7, within the Flood Hazard Overlay District, including coordination with the VT Agency of Natural Resources Rivers Program as required by 24 V.S.A. §4424.
4. Site construction shall adhere to the standards outlined in Section 3.12(2)(A-E) including:
 - The amount of soil exposed at any one time must be kept to a minimum.
 - Areas of exposed soil that are not being actively worked, including soil that has been stockpiled, must be stabilized.
 - Stormwater shall be controlled during construction to minimize soil erosion and transport of sediment to surface waters.
 - Soil disturbance shall not be allowed between the period of October 15 to April 15 unless adequate erosion control measures are provided as outlined in Section 3.12(2)(A-C) taking into consideration winter and spring conditions.
 - An adequate stormwater drainage system must be continuously maintained to ensure that existing drainage patterns are not altered in a manner to cause an undue adverse impact on neighboring properties, town highways or surface waters.
5. A certificate of occupancy must be obtained from the Zoning Administrator following the construction but prior to occupancy and use to ensure that is has been constructed as approved by the Development Review Board, as required under Section 2.10 of the zoning regulations.
6. These conditions of approval shall run with the land and are binding upon and enforceable against the permittee and his successors. By acceptance of a permit, the permittee agrees to allow authorized representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purposes of ascertaining compliance with the conditions of approval.

Voting favor: F.Aumand III, D.Clymer, P.Roberts, C.Walton, L.Wasserman, T.Hand, A. Volansky
Voting to deny: None

The motion PASSES, 7-0

Dated at Stowe, Vermont this the 9 day of November 2020

By: 
Drew Clymer, Chair

NOTICES:

1. In accordance with 24 V.S.A. § 4449(e), applicants are hereby notified that state permits also may be required prior to land subdivision or construction. The applicant should contact the DEC Permit Specialist for District #5 (802-505-5367) to determine whether state permits are required.
2. The applicant or another interested person may request reconsideration of this decision by the Development Review Board, including associated findings and conditions, within 30 days of the date of this decision by filing a notice of appeal that specifies the basis for the request with the Secretary of the Development Board. Pursuant to 24 V.S.A. § 4470, the board may reject the request within 10 days of the date of filing if it determines that the issues raised on appeal have already been decided or involve substantially or materially the same facts by or on behalf of the appellant.
3. This decision may also be appealed to the Environmental Division of the Vermont Superior Court by the applicant or another 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 Division Court Proceedings.
4. In accordance with 24 V.S.A. § 4455, on petition by the municipality and after notice and opportunity for hearing, the Environmental Division may revoke a permit based on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.

