

Burlington Development Review Board

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Burlington Development Review Board

Minutes/Findings of Fact
July 1, 2014

In RE: 14-1108VR; 451 Appletree Point Rd. (Ward 4, WRL) (Tax Lot No. 030-3-017-000)

Owner/Representative: David & Brianne Chase / Al Senecal

Request: Variance from front yard setback to construct new single family residence in place of existing camp

Members Present:

Jonathan Stevens
Michael Long
Jim Drummond
Brad Rabinowitz
Alexandra Zipparo
Israel Smith

Evidence Presented:

The Board examined the materials submitted in support of this request.

I. FINDINGS

Background Information:

The applicant is seeking a variance from applicable front yard and waterfront setbacks on a lot containing a seasonal camp. The lot was created in 2004 under the previous zoning and subdivision regulations. These previous regulations contained standards different from those in effect today. The front yard setback at the time was 15', and the waterfront setback was 50'. Today's front yard setback is based on the average of neighboring properties (in this case 106' +/- 5'), and the waterfront setback is 75'. The requested variance seeks a 25' front yard setback (~ 22' from the road's edge) and an 18' waterfront setback.

Written public comment has been submitted that asserts the property owners were aware of the waterfront setback restrictions at the time of subdivision under the prior subdivision regulations and should not be granted relief from this setback by way of variance. Indeed, there was a 50' waterfront setback in place at the time of subdivision as noted above. However, as noted in these findings, the variance from the waterfront setback is unnecessary and unwarranted.

No development is included in this application. The variance is sought as a precursor demolition of the camp and construction of a single family home to be filed under separate permit if the variance is granted.

Previous zoning actions for this property are as follows:

- 1/13/04, Denial of 3-lot subdivision
- 7/26/04, Approval of 2-lot subdivision

Article 12: Variances and Appeals

Sec. 12.1.1 Variances

(a) That 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 such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

The lot is not especially small at about ½ acre, nor is it particularly irregular. As with the neighboring property at 465 Appletree Point Road, the problem stems entirely from the way the front yard setback is calculated per Table 4.4.5-3: *Residential District Dimensional Standards*. The front yard setback is based on the average of 2 adjacent lots on both sides of the subject lot, +/- 5'. In this case, the front yard setback is based solely on 395 Appletree Point Rd to the east. The next lot further east is vacant, and the two lots to the west are vacant. The application indicates an applicable front yard setback of 100'. Staff measurements based on the boundary survey of 395 Appletree Point Rd shows an applicable setback of 106', +/- 5'. This discrepancy needs to be resolved. A front yard setback of 106' places any potential new development into the lake. Compliance with the front yard setback is impossible.

The key difference between this property and neighboring 465 Appletree Point Rd is the presence of a camp structure on this lot whereas 465 is vacant. There is an argument that the existing structure, even though nonconforming relative to the front yard setback, allows for reasonable use of the property and negates variance approval. Conversely, the building is a seasonal camp. Any renovations to the structure that affect its existing envelope would be prohibited by the 106' front yard setback. The camp structure is effectively frozen as is. The requested variance would allow for a 25' front yard setback like that requested at 465 Appletree Point Road and would allow for reasonable redevelopment of the property with a single family home. **(Affirmative finding as conditioned)**

The requested variance from the 75' waterfront setback is unnecessary. While the 75' waterfront setback overlaps substantially with the 106' front yard setback, the waterfront setback is considerably more flexible. Sec. 4.4.5, *Residential Districts*, (d) 1, B, *Encroachments into the Waterfront Setback*, (i) allows replacement of a principle structure with a new structure in the same location so long as the new structure does not increase the extent or area of encroachment. The existing structure is 17' – 4' from the waterfront, varying with the 100' elevation. The requested 18' setback complies with this criterion by not increasing the extent of encroachment. So as to avoid increasing the area of encroachment (the 75' setback reaches close to the road), the new structure would be limited to the 1,215 sf footprint of the existing primary structure.

Such a footprint enables construction of a reasonably sized single family home. No variance is needed. **(Adverse finding)**

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.

As noted above, the 106' front yard setback reaches across the entire property and into the lake. Any new construction or renovation outside of the existing building envelope would be prohibited. Compliance with the front yard setback is impossible. **(Affirmative finding)**

As noted above, no variance from the waterfront setback is necessary. The provisions of Sec. 4.4.5 allow retention of the existing extent and area of encroachment. **(Adverse finding)**

(c) The unnecessary hardship has not been created by the applicant.

The hardship relative to the front yard setback is related to the difference between the pre-existing lot and the setbacks in effect at the time it was created and the present setback requirements. It is not a lot newly created by the applicant under the current regulations. **(Affirmative finding)**

There is no unnecessary hardship relative to the waterfront setback. Retention of a 1,215 sf footprint at or behind the existing camp structure is sufficient for a new single family home. **(Adverse finding)**

(d) That 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, nor be detrimental to the public welfare.

The variance from the requirements of the front yard setback would not alter the essential character of the neighborhood or district in which the subject property is located. The variance would enable the construction of a single family home on a ~1/2 acre lot. Such is the predominant development pattern in this area of the city. **(Affirmative finding)**

The variance from the waterfront setback is unnecessary as noted before. **(Adverse finding)**

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The requested 25' front yard setback allows room for a reasonable building envelope and continues to reflect the neighborhood pattern of homes set relatively far back from the road and relatively close to the shoreline. **(Affirmative finding)**

No variance from the waterfront setback is necessary. **(Adverse finding)**

(f) *The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.*

If granted, the variance from the front yard setback requirement would not result in the extension of a noncomplying situation or allow a nonconforming use of land. The variance would simply enable the construction of a single family home. **(Affirmative finding)**

If granted, the variance from the waterfront setback would result in the extension of a noncomplying situation, specifically the area of encroachment into the waterfront setback. It would not, however, allow a nonconforming use of land. **(Adverse finding)**

II. MINUTES

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

III. MOTION

Motion: Brad Rabinowitz

I move that the Board grant Variance approval for the front yard setback for the property at 451 Appletree Point Road in the WRL zone in accordance with Article 12. Approval is subject to the following conditions:

1. This variance approval is for relief from the front yard setback requirement of Table 4.4.5-3, *Residential District Dimensional Standards*. No variance is granted for the waterfront setback.
2. Prior to permit application for construction on the property, the front yard setback shall be verified, subject to staff review and approval.
3. No development is included in this approval. All development is subject to a separate zoning permit.
4. Per Sec. 12.1.3, *Filing a Request, Public Hearing, and DRB Decision*, this variance approval shall be valid for a period of 2 years.

Seconded: Michael Long

Vote: 6-0-0, motion carried

Dated at Burlington, Vermont, this ____ day of July, 2014

Respectfully Submitted,

Jonathan H. Stevens, Development Review Board Vice Chair