

TOWN OF MARSHFIELD DEVELOPMENT REVIEW BOARD

Appeal of Zoning Administrator Decision/Request for a Variance, Jill Sudhoff-Guerin and Jeff GUERIN Appellant

Re: Town of Marshfield Parcel ID CF004, Permit #21-22

106 Cree Farm Rd.

Marshfield, Vermont 05658

I. Procedural History

On December 2, 2021, the Marshfield Zoning Administrator (ZA), Kate Hayes, issued a letter to Jill Sudhoff Guerin and Jeff Guerin (Appellants) denying their request to expand the current footprint of their dwelling by extending the current footprint of the structure by 8 ft. towards the northside of the house and by 4 ft towards the east. The ZA denial explained that the house currently does not meet the front setback requirements in the Town of Marshfield Zoning Bylaws (Bylaws) that require a structure be 65 feet from the centerline of the road and, therefore, she could not approve the project. The Appellants appealed the decision on December 24, 2021 and requested the Marshfield Development Review Board (DRB) grant a variance for the proposed project.

The DRB held a hearing on the appeal/request for a variance on February 9, 2022. At that hearing, Appellants presented evidence and argument to support their appeal. The ZA presented her evidence and argument as to why a variance or a waiver is required from the DRB in order to grant a permit for the project and why, in her opinion, the DRB should not approve the project.

The DRB closed the matter following the hearing on February 9th. The DRB deliberated on this matter on February 9th. This matter is now ready for decision.

II. Findings of Fact

Below are the DRB's findings of fact based on the evidence in the record in this proceeding, which includes the Zoning Administrator's letter and accompanying documents, the appeal filed by the Appellants and accompanying documents, the relevant testimony and written information submitted at and after the hearing.

1. Appellants indicated that the current size of their home presents a hardship and the primary objective of the proposed addition is to provide necessary indoor living space to properly accommodate their family of four.
2. The current structure does not meet the current set back from the road, which is 65 feet from the centerline of the road under the Bylaws.
3. Appellants acknowledge that footprint of their proposed project does not meet the current zoning regulations, and argue that the project meets the criteria in the bylaws for a grant of a variance.
4. Appellants indicated that they designed the proposed addition in the front of their house after reviewing the challenging land conditions of their property to the back, to the left side, and the right side of the house. Appellants indicated that these physical characteristics make it difficult to consider anywhere but the front of their house as the only reasonable place for an addition.
5. The back of Appellants house is essentially on rock ledge; making a foundation for an addition very expensive and difficult to stabilize.
6. To the right of Appellants house there is a steep drop to the yard that the existing foundation settles on, which would again be expensive to regrade and may create unanticipated issues with the house foundation.
7. To the left of the house is where a favored Maple tree stands and the current grade of the land is almost level with the second floor of the house, which again would require expensive, land-altering digging to get the benefit of their proposed addition.
8. After consulting with multiple construction professionals Appellants determined that extending the existing roofline to the front would be the most secure, economical method to add on to their house and the only affordable option for them to move forward on making their home more livable.
9. Notwithstanding the above findings, Appellants acknowledged at the hearing that they could build their addition in a manner that complies with the Bylaws, however the physical challenges of doing so would be very expensive and difficult.
10. Appellants argue that they have not created the conditions that make it difficult and expensive to expand their house as proposed.
11. Appellants argue that if approved, the variance would represent the minimum addition that will provide them with necessary indoor living space and will represent the least deviation possible from the Bylaws.
12. Appellants' proposal would not increase the nonconformity with the Bylaws because the proposed expansion will not extend into the setback from the road further than the closest point of the existing structure, which is an existing deck.
13. The ZA's position is that the Appellant is not allowed to extend any part of the structure further to line up with the existing deck because the deck was approved by the DRB in 2010 via a waiver from the setback provision in the Bylaws.

III. Conclusions of Law

Based on the findings of fact and the evidence in the record of the proceeding the DRB concludes that Appellants do not meet the criteria for a variance under the Bylaws. However,

the DRB finds that the Appellants' proposal will not increase the front setback nonconformity as described herein under Section 281 of the Bylaws. Accordingly, the DRB grants the appeal on the grounds that it will not increase the nonconformity of the structure under the Bylaws and, therefore, a zoning permit for the project as proposed may be issued by the ZA.

To qualify for a variance, an appellant must demonstrate that all five criteria in Section 240 of the Bylaws are met. The criteria in Section 240 of the Bylaws are mandated by state law. See 24 V.S.A. § 4469. Appellants have made the case that it would be difficult and expensive to construct their project to meet the Bylaws. However, Appellants did not establish that it can meet the criterion set forth in Section 240(2) of the Bylaws (and See 24 V.S.A. § 4469(a)(2)), which provides:

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 the property.

Appellants' property is already developed and reasonable use is being made of the property. A house and other structures exist and are used on the property. While the DRB appreciates Appellants' desire to expand the existing structure, it is not necessary to make reasonable use of a property that already does not comply with the Bylaws.

The Vermont Supreme Court (Court) has been clear a variance may not be issued to improve a property where reasonable use is already being made. *In re: George Dunnett*, 172 Vt. 196 (May 4, 2011). In Dunnett the Court ruled that a variance was not necessary for reasonable use of the property as ski shop, and the property owner therefore was not entitled to variance to add a new building, even though granting a variance may have improved commercial potential for the property. *Id.* The principal articulated in Dunnett applies to this case – that while the variance proposed by Appellants would improve the use of the property, it is not necessary to make reasonable use of the property.

However, as previously noted the DRB finds that the Appellants may expand their house toward the road as long as the expansion at no point exceeds the closest point between the current structure and the center of the road. The DRB has found no provision in the Bylaws, state law or case precedent to support the ZA's contention that because the deck, which is the closest part of the structure to the road, was previously granted a waiver, Appellants may not extend other parts of the structure to match the dimensions of the deck and qualify under Section 281 of the Bylaws as not increasing the nonconformity of the structure.

Section 281 of the Bylaws provides:

Any non-conforming structure may be extended in any direction that does not increase the non-conformance. All other applicable zoning regulations must be adhered to.

The DRB believes that the Bylaws clearly allow Appellants to extend the structure as long as no part of the expansion exceeds where the deck intrudes into the setback from the road. The DRB notes that Section 281 of the Bylaws provides that “any” nonconforming structure may be extended in “any” direction so long as the nonconformity is not increased. This is very broad language without any limitations for qualifying as a structure that may be expanded under Section 281 of the Bylaws, including whether the existing nonconforming structure was approved via a DRB waiver.

IV. Decision and Order

The DRB grants the appeal for the reasons set forth herein.

Voting to Approve the Appeal/Variance: Jon Groveman, Gary Leach, Jenny Warshow and Les Snow

Voting to Deny the Appeal/Variance: None. **Absent:** None.

Approved and ordered at Marshfield, Vermont, this day of February 25th 2022.

By: Jon Groveman



Chair of the Marshfield
Development Review Board

NOTICE OF RIGHT TO APPEAL: In accordance with 24 V.S.A. §§ 4471 and 4472, this decision may be appealed to the Vermont Environmental Court within 30 days of the date of this decision. Notice of appeal shall be filed by certified mailing, with fees, to the Vermont Environmental Court and by mailing a copy of the appeal to the Marshfield Town Clerk. Failure of any interested person to appeal this decision to the Vermont Environmental Court within the specified 30-day period shall result in such interested person being bound by this decision or act of the DRB. Thereafter, such an interested person shall not contest, either directly or indirectly, the decision or act of the DRB in any subsequent proceeding, including any enforcement action brought under the provisions of Title 24, Chapter 117 of the Vermont Statutes Annotated. See also Town of Marshfield Zoning Regulations at §235 (Appeals to Environmental Court).