

**TOWN OF CHARLOTTE
Zoning Board of Adjustment
Variance**

| | | |
|--|---------------------------------|------------------|
| In Re: Matthew and Lauren Daley 2255 Greenbush Road |))))))) | ZBA-13-08 |
|--|---------------------------------|------------------|

OPINION

I. Introduction and Issues Presented

This matter came before the Zoning Board of Adjustment (ZBA) on the application of Matthew and Lauren Daley (Applicants), 2255 Greenbush Road for a variance to build a garage addition onto the south side of their existing house. The Applicants say because their lot is a sub-standard sized lot the proposed project cannot meet the dimensional standards of the Land Use Regulations¹ for this zoning district and therefore must first obtain a variance before they can proceed with their project. The relief requested by the Applicants is a variance from the southern property boundary.

Based on the application, exhibits and testimony at the hearings² on November 6 and November 13, 2013 and a site visit on November 9 the Board renders the following Findings of Fact and Conclusions of Law.

II. Substantive Review

The Board must hear and decide a request for a variance in accordance with the Act [§§4424(E), §4469(a)] and associated appeal procedures under Section 9.7 of the Regulations.

¹ Unless otherwise indicated, all Section references in this document are to the Town of Charlotte Land Use Regulations approved November 2, 2010

² Participants in the hearings: Matthew Daley, Lauren Daley, Robert Rodier

A. Evidence presented

1. Regarding the parcel and building site:

- a. Testimony presented by the Applicants for the existing structure, its dimensions and use and the proposed changes and site plan...
 - i. The Applicants submitted a site plan of the lot, the south and east sides are the only setbacks in compliance with the 50 feet setbacks. The setback from the road ROW is approximately 17.8' and the existing setback from the northern property line is approximately 21.7'
 - ii. The lot dimensions are approximately 110 ft. x 110 ft. making this a preexisting nonconforming lot in a 5 acre zoning district.
 - iii. A drawing was submitted showing the location of the replacement mound for the existing failed septic system. The toe of the mound will extend towards the eastern and the southern property lines. This location limits how far to the east the garage can be located.
 - iv. The proposed garage would house two cars. The space above the garage would have two bedrooms and the connector would go between the garage and existing house.
 - v. The existing house has two bedrooms and an 8' x 10' space used as a bedroom, there are currently three bedrooms and the number will remain at three.
 - vi. The Applicants believe the requested relief is proper under the circumstances because their lot is a pre-existing small lot that was carved out of a larger lot many years ago and is more in keeping with

the size lots found in the Village District only a few lots to the south.

The old existing septic system is failing and the new system is required to be a mound which will take up most of the rear yard.

vii. Because of the narrowness of the lot, and the pending placement of the septic system, the only option is to ask relief of the side yard setback, there are no other options that would allow the adequate use of the property.

viii. The variance if granted would not reduce access to any renewable energy resources and would not be detrimental to the public welfare.

ix. The variance, if authorized, would be the minimum that would allow the placement of both the new septic field and the two car garage addition. The two car garage's position in the side yard uses the least amount of side yard necessary so that the largest possible side yard setback remains.

A. Findings of Fact

1. Regarding the parcel and building site:

- a. This parcel is located in the Rural Zoning District (RUR) established by the Charlotte Land Use Regulations adopted November 2, 2010.
- b. At approximately 110 feet by 110 feet, the lot is approximately 12,100 square feet in area, less than 1.0 acre (Note: 1 acre is 43,560 square feet).
- c. The parcel is developed with a single family residence. The existing setback from the road right-of-way is 17.8' and the setback from the northern property line is 20'. The eastern and southern setbacks to the house are both more than 50 feet.

- d. The area where the garage is proposed is currently used as a driveway and parking area for two vehicles.
2. Regarding the proposed addition to the structure, its dimensions and intended use:
 - a. The proposed setback to the southern property line would be 26.2', to the eastern property line 50.8' and would not be any closer to the road than the existing house.
 - b. Based on measurements, site visit observations, testimony, and photographs, the size of the proposed new addition is an 11.7' x 7.5' connector and a 23' x 24' garage. The addition will be two stories with living space above the new addition.
 - c. The height of the proposed addition will be 20'6"; the existing structure height is 22'4".

B. Determinations of Law

1. The Land Use Regulations require a minimum lot size of 5 acres in the Rural District. Because this lot is less than 1 acre, this lot is considered a pre-existing non-conforming lot and may be developed in accordance with Section 3.7 of the Land Use Regulations.
2. The Dimensional Standard setbacks for the Rural District are 50 feet.
 - a. Section 9.7 allows the Board to decide requests for a variance if enforcement of these regulations will result in an undue hardship. The Board may grant a variance, and render a decision in favor of the appellant, only if *all* of the following facts are found, and the findings are specified in its written decision:

- (1) 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 these regulations in the neighborhood or district in which the property is located.
- (2) Because of these physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is necessary to enable the reasonable use of the property.
- (3) The unnecessary hardship has not been created by the appellant.
- (4) 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.
- (5) 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 lot for which this variance is requested is a pre-existing non-conforming lot that was created before the town had adopted zoning regulations. The lot

size is characteristic of the lots located in the Village District. The Village District is located south of this parcel and although the parcel is not part of the Village District it is considered to be part of the neighborhood. A lot that is 110 ft. x 110 ft. cannot reasonably be developed meeting all four fifty foot setbacks.

3. The Applicants did not create this lot; it was created before zoning in the town. In addition to the small lot size, the replacement of the failing septic system prohibits placing the garage further to the east on the property, and even if this were a possibility, it would still be necessary to request a variance from setbacks.
 - a. The variance, if authorized will not alter the essential character of the neighborhood which is located close to the Village District where the required setbacks are 25 feet. The Village District is less than 1,000 feet to the south of this parcel.

III. Decision

For the reasons discussed above, the Board concludes that this request meets the criteria for a variance and grants a variance from the southern property line with the following conditions and notes as described below:

1. Applicants must obtain applicable local permits and approvals as required under the Land Use Regulations for the proposed addition.
2. This decision does not regulate the number of bedrooms allowed in this project. The number of allowable bedrooms is regulated by the wastewater permit
3. The proposed addition will be no closer than 26.2 feet to the south property line as shown on the site plan submitted with the application and reviewed at the hearing.

4. All construction to be as shown on drawings submitted as “The Daley Residence, Robert Rodier, Architect 9-30-2013”

On motion duly made and seconded the Board voted unanimously to grant a variance as requested in ZBA-13-08.

VOTE: 5 – in favor, 0 – opposed

Dated at Charlotte, Vermont, this _____ day of December, 2013.

Benjamin Pualwan
Chairman

THIS DECISION MAY BE APPEALED TO THE VERMONT ENVIRONMENTAL COURT BY THE APPLICANT OR AN INTERESTED PERSON WHO PARTICIPATED IN THE PROCEEDING. SUCH APPEAL MUST BE TAKEN WITHIN 30 DAYS OF THE DATE OF THIS DECISION, PURSUANT TO 24 VSA §4471 AND THE VERMONT RULES FOR ENVIRONMENTAL COURT PROCEEDINGS.