

TOWN OF CHARLOTTE
Zoning Board of Adjustment

IN RE: 4717 Spear Street
Andras Kirschner
Melinda V. Kirschner

Findings of Fact and Decision

This matter came before the board at the request of Andras Kirschner, 4717 Spear Street, for a variance to replace a structure on the parcel that would be less than 100 feet from the road right-of-way. Applicant specifically requests to build a home with a 70 ft. setback from the road. Applicant states that the lot is small and irregular with ledge, exceptional topography being steep hills. The applicant adds that a runoff stream dividing the property into two different sections makes building a house a challenge.

On September 29, 2005 the applicant submitted an application to the Zoning Administrator for a permit to replace the trailer on this lot with a new home. In a letter dated October 4, 2005 the Zoning Administrator informed the applicant that the application as submitted did not meet the dimensional setback requirements of the district and was therefore denied. Applicant was directed to apply to this Board to request a dimensional variance.

Based on the application and testimony submitted on August 3, September 21, October 12, November 9 and a site visit conducted on September 21, 2005 the Board makes the following findings and conclusions in this matter.

Findings of Fact

1. Andras Kirschner and Melinda Kirschner are the owners of the property located at 4717 Spear Street.
2. The parcel is approximately 3.01 acres and is located in the Rural Zoning District as established by the Charlotte Zoning Bylaws last amended March 2002.
3. For the Rural Zoning District Section 4.2.D of the Bylaws for Dimensional Requirements lists a minimum lot size of 5 acres, front yard setbacks of 100 ft. from the edge of a road right-of-way and 50 ft. setbacks from side and rear yards.
4. This parcel is considered a pre-existing non-complying lot that is developed with a single family residence. The existing mobile home is listed as a single story building of 684 square feet. This home is approximately 27 ft. from the edge of the right-of-way. (Spear Street is a 4-rod road)

5. The request is to remove the existing 2-bedroom residence and replace it with a new 3-bedroom structure in a different location on the lot. The new structure to be 5895 sq. ft.
6. Site Plan prepared by ESPC, SP-1, 9/23/05 submitted on November 9, 2005 shows the location of the proposed new septic primary and replacement areas. Also shown are the proposed house, vestibule and garage to be set 56 ft. from the edge of the right-of-way.

When the relief requested by the applicant is a variance from the provisions of these regulations the Board of Adjustment may grant such a variance after public hearing, only if all of the following facts are found affirmatively and these findings are specified in its decision:

1. 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 regulations in the neighborhood or district in which the property is located
2. 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 a variance is therefore necessary to enable the reasonable use of the property
3. That the unnecessary hardship has not been created by the appellant(s)
4. That the variance, if granted, 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; and
5. That the variance, if granted, 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 applicant has stated that to meet the setback requirement for the frontyard of 100 ft. would likely require significant excavation, filling and blasting of ledge.

Under criteria #1 a hardship means the deprivation of all beneficial use of the land; and the unique physical circumstances or conditions must prevent development of the land consistent with the zoning requirements. Based on the site plan submitted at the hearing the Board concludes that the land can be developed consistent with the setbacks.

The Board further concludes that this application does not meet criteria #2. The property is already developed and is being used and had a valid building permit from 1970.

In order for a request for a variance to be granted, all five criteria must be satisfied. Since this request does not meet criterion #1 or #2, the Board will not address the final three.

For the reasons stated above, this Board DENIES the request for a variance. (Vote—unanimous decision of 4 members present and voting with Brady Toensing absent)

DATED AT CHARLOTTE, VERMONT THIS 28th DAY OF NOVEMBER 2005.

CHARLOTTE ZONING BOARD OF ADJUSTMENT



JONATHAN W. FISHER, VICE 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.