

TOWN OF PAWLET, VERMONT
DEVELOPMENT REVIEW BOARD

In re: Notice of Violation, Cameron Perham – Decision on Remand

Landowner: Cameron Perham
Property Address: 206 Maple Grove Road, Pawlet, VT
Hearing Date: January 28, 2021

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ON REMAND

INTRODUCTION AND PROCEDURAL HISTORY

This is a decision on a voluntary remand from the Environmental Court from an appeal of a decision of the Development Review Board (“DRB” or “Board”).

Landowner Cameron Perham owns certain property located at 206 Maple Grove Road in Pawlet, Vermont (“Property”). Mr. Perham submitted an application for a zoning permit dated November 15, 2014, seeking approval for a change of use from “wooded area” to “barn/storage,” and for the construction of a barn 30’ in length and 24’ in width (720 ft²) (“Application”). The Application indicated that a setback of 100 feet would be provided for on the right side of the proposed structure. The Zoning Administrator approved the Application and issued Zoning Permit No. 2014-19 on November 18, 2014 (“Permit”). Mr. Perham constructed the structure in early 2015.

Mr. Perham’s property is bounded on the south by lands of Ashley Waite. On June 6, 2018, Mr. Waite, raised concerns about the as-built structure at a public hearing before the DRB. The issues raised included concerns regarding Mr. Perham’s use of the structure, Mr. Perham’s use of the right-of-way, and the location of the structure relative to certain setback requirements set forth in the 2014 permit and the Town’s Unified Bylaws (“Bylaws”). The DRB directed the Zoning Administrator (“ZA”) to investigate the alleged use violation, and ultimately concluded that the structure complied with the applicable setback requirements in the Bylaws. Mr. Waite appealed the DRB decision to the Environmental Court.

On May 8, 2019, the Environmental Court dismissed the appeal for lack of jurisdiction because the DRB did not have the jurisdiction to evaluate the request for enforcement of the barn permit, the Bylaws, or Mr. Perham’s deed.

On August 29, 2019, the Zoning Administrator issued a notice of violation (“NOV” or “Notice”) for the Property. The Notice stated that the as-built setback for the structure “is significantly less than what was approved, in violation of the Permit.” The Notice instructed the Landowner that, “[t]o cure this violation, you must eliminate the deficiency in the side setback.” Mr. Perham timely appealed from the NOV.

The DRB held a site visit at the Property followed by a public hearing on November 7, 2019. The DRB then issued a determination that, although the structure as built conformed to the setback requirement in the Bylaws, it did not conform to representations set forth in the Permit. The determination was appealed to the Environmental Court, and the parties ultimately

stipulated to a remand to allow Mr. Perham to submit a revised permit application which would conform his representations to the as-built conditions. Mr. Perham submitted a revised application, for the structure, referred to therein as a “garage/shed,” with a survey and a sketch attached for reference.

A hearing was held on January 28, 2021, at which Mr. Perham was represented by Attorney Jeffrey Guevin and neighboring property owner Ashley Waite was represented by Attorney John Mazucchi. Counsel for both Mr. Perham and Mr. Waite each submitted written argument to the Board following the Hearing. At the request of both parties, the Board revisited the factual findings set forth in its December 20, 2019 decision, which findings the Board now vacates.

FINDINGS OF FACT

I. The Structure as-built Conforms to the Bylaws

The 2011 version of the Bylaws was in effect at the time the Permit was issued. The 2011 Bylaws set forth dimensional requirements for Structures in the Agricultural and Rural Residential District (ARR) in Article II, Section 6. Under this provision, the “[m]inimum setback from *any* property boundary” is 25 feet. (Emphasis added).

As depicted on the plat submitted with Mr. Perham’s revised application, the eastern property boundary of the Perham Property is the centerline of the right-of-way between the Perham Property and the property now or formerly of the Arlene Perrault Trust (which right-of-way provides access to the Waite Property). Accordingly, the applicable setback is 25 feet.

According to the survey, and as acknowledged by both parties, the right-of-way is 50 feet in width—25 feet on each side of the centerline.

The Board thus finds that the distance from the easternmost point of the structure to the eastern Property boundary is at least 25 feet and therefore satisfies the minimum setback requirement set forth in the Bylaws.

The Board further concludes that the pattern of development in the Town of Pawlet demonstrates that a residential driveway such as the right-of-way at issue in this case, is not intended to create the type of restriction urged by Mr. Waite. In fact, driveways serving one to two single-family residences are expressly excluded from the definition of a “Traveled Way” in the Bylaws. Notably, the scope of the right-of-way to which Mr. Perham’s Property is subject is for access to *one* residential property or an agricultural use. “Right of Way” is also not clearly intended to include driveways for purposes of determining setback requirements. The Board resolves the ambiguity in favor of Mr. Perham.

II. Condition of Approval

The survey sketch submitted with the revised application still does not appear to reflect the correct distance from the easternmost corner of the structure to the eastern boundary of the Perham Property.

As such, the Board’s approval of the revised permit is conditioned upon receipt, within 10 days of the date of this decision, of a revised sketch with an accurate representation of the distance from the eastern-most corner of the structure to the eastern boundary of the Property.

ORDER

Mr. Perham is directed to submit a revised sketch with an accurate representation of the distance from the eastern-most corner of the structure to the eastern boundary of the Property within 10 days. Upon receipt of an accurate sketch, the Zoning Administrator shall approve the revised permit application.

March 2, 2021

Approved by the Development Review Board:

/s/ Keith Mason, Chair

/s/ James Glick, Vice Chair

/s/ Jonathan Weiss

/s/ Gary Baierlein

/s/ Sarah Ludlam

NOTICE: This Decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceedings before the 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 Court Proceedings.