Vermont Superior Court
Filed 11/10/26
Environmental Division

VERMONT SUPERIOR COURT
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org

ENVIRONMENTAL DIVISION
Docket No. 25-ENV-00132

4373 VT Rte. 242 Variance Approval	**DECISION ON MOTIONS**

In this matter, Stephen Yardan (Appellant) appeals a decision of the Town of Jay (Town) Zoning Board of Adjustment (ZBA) approving Clifford and Karen Lapoint and ML Heath Jay LLC's (together, Applicants) application for a variance of lot frontage requirements for their property at 4373 VT Route 242, Jay, Vermont (the Property). Presently before the Court are Appellant and Applicants' cross motions for summary judgment.

In this matter, Applicants are represented by Peter G. Raymond, Esq. Appellant is represented by Mark G. Hall, Esq. The Town has not taken a position with respect to these filings but is represented by David W. Rugh, Esq. and Zachary I. Handelman, Esq.

Prior to addressing the merits of the motion, it is important to address the procedural posture of this case and the scope of the issues before the Court. The application giving rise to this appeal is one for a variance. Applicants have cross-appealed, asserting that the frontage dimensional standard can be waived through the Town's Development and Land Use Regulations (the Regulations). Applicants have not, however, applied for a waiver. On April 27, 2026, this Court held a status conference in this docket and parties appeared through counsel. At that status conference, Appellant's and Applicants' counsel agreed that the Court on appeal could hear issues related to a waiver. Following that conference, the Town's counsel conferred with their client and filed a notice similarly agreeing that the Court should hear issues related to the waiver and its merits.[1]

On summary judgment, the parties have agreed that the Court may decide whether the Regulations § 708 waiver provision is available to Applicants to reduce the lot frontage requirements. Applicants and Appellant cross-move on this issue. No party requests the Court currently adjudicate whether Applicants are entitled to that waiver through the pending motions.

[1] The scope of the parties' agreement as to the waiver request is somewhat unclear. The Court discusses this issue more fully below.

Legal Standard

To prevail on a motion for summary judgment, the moving party must demonstrate "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a), applicable here through V.R.E.C.P. 5(a)(2). When considering a motion for summary judgment, the nonmoving party receives the benefit of all reasonable doubts and inferences. Robertson v. Mylan Labs., Inc., 2004 VT 15, ¶ 15, 176 Vt. 356. When considering cross-motions for summary judgment, the Court considers each motion individually and gives the opposing party the benefit of all reasonable doubts and inferences. City of Burlington v. Fairpoint Commc'ns, Inc., 2009 VT 59, ¶ 5, 186 Vt. 332.

Factual Background

The Court recites the following facts solely for the purpose of deciding the pending cross-motions. These facts do not constitute factual findings because factual findings cannot occur until after the Court conducts trial. Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem.).

1. Applicants own the Property, located at 4373 VT Route 242, Jay, Vermont.
2. The Property is within the Rural 1 (R1) Zoning District as defined by the Regulations.
3. The Property is approximately 115 acres in total.
4. Applicants have applied for a two-lot subdivision of the Property. The subdivision application seeks to create a new 5.62-acre parcel (Parcel 2) and a remaining 109-acre parcel.
5. The Property has frontage on both Route 242 and Old Jay-Montgomery Road.
6. Parcel 2, as proposed, would have approximately 202 feet of frontage on Route 242.[2]
7. The R1 District imposes a 250 minimum frontage requirement.
8. Appellant Stephen Yardan owns property adjacent to the Property.
9. Applicants applied for a variance from the minimum frontage requirements to support their subdivision application.
10. The Town granted that variance and Appellant subsequently appealed.
11. Applicants have not applied for a waiver from the frontage requirement but seek review of such waiver on appeal.

[2] As set forth below, there is a lack of clarity, and seemingly a dispute of material fact, as it relates to the Property's current frontage on Route 242.

Discussion

I. Variance

Appellant moves for summary judgment on the merits of Applicants' variance application. Applicants oppose the motion. Variances may be granted if:

> (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 these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.
>
> (2) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
>
> (3) 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 variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

24 V.S.A. § 4469(a)(1)-(5).

There are disputes of material fact that preclude summary judgment. First, the parties appear to dispute the Property's current frontage on Route 242. Appellant asserts that the Property currently "has adequate frontage on Route 242." Statement of Undisputed Material Facts at ¶ 9 (filed Aug. 25, 2026).[3] Applicants dispute this fact in part. While reserving that they assert that the frontage is adequate, Applicant represents that the lot's frontage is presently 202 feet, 48 feet short of the 250 minimum. The current frontage on Route 242 is a material fact that is disputed and goes to multiple variance criteria. Put another way, if Applicants' request seeks a variance that reflects current conditions of the Property's frontage on Route 242, generally, this is highly relevant to the scope of

[3] Notably, in response to Applicants' additional statement of undisputed material facts, Appellant does not dispute that the Property has only 202 feet of frontage along Route 242. It is difficult to understand Appellant's position that the Property has adequate frontage, even if disputed, with the fact that he does not dispute that the frontage is 48 feet short of the 250 feet required. In any event, there remain other disputes of material fact precluding summary judgment.

the variance request. Second, the parties dispute physical features of the Property as it relates to frontage on Old Jay-Montgomery Road that would impede access from that point. These facts relate to the specifics of this lot are highly relevant to each variance criteria. Third, Appellant objects to Applicants assertion that other parcels in the area lack 250 feet of frontage on Route 242 and asserts that such an inquiry is not relevant under the variance criteria. The Court disagrees. Pursuant to § 4469(a)(4), a variance can only be granted if, in part, it "will not alter the essential character of the area . . . ." If other parcels around the Property lack the requisite frontage on Route 242, that is relevant to the Court's review.

Thus, there are material facts in dispute that are relevant and material to multiple variance criteria and, therefore, whether Applicants are entitled to a variance. Thus, Appellant's motion on this issue is **DENIED**.

II. Waiver

Next, the parties dispute whether Applicants may seek a waiver of the frontage requirement. Appellant asserts that Applicants are precluded from seeking or obtaining a waiver and Applicants assert that they may permissibly seek a waiver of the frontage requirement.

When interpreting a zoning ordinance, the Court relies upon the principles of statutory construction. In re Laberge Moto-Cross Track, 2011 VT 1, ¶ 1 (mem.). The Court's goal is to effectuate the intent of the drafters, first by looking to the plain meaning of the regulation at issue and the "whole of the ordinance." Tyler Self-Storage, 2011 VT 66, ¶ 13 (quotation omitted). In construing statutory or ordinance language, our paramount goal is to implement the intent of its drafters. Morin v. Essex Optical/The Hartford, 2005 VT 15, ¶ 7, 178 Vt. 29. We will therefore "adopt a construction that implements the ordinance's legislative purpose and, in any event, will apply common sense." Laberge MotoCross Track, 2011 VT 1, ¶ 8 (quotation omitted); see also In re Bjerke Zoning Permit Denial, 2014 VT 13, ¶ 22 (quoting Lubinsky v. Fair Haven Zoning Bd., 148 Vt. 47, 49, 195 Vt. 586 (1986)) ("Our goal in interpreting [a zoning regulation], like a statute, 'is to give effect to the legislative intent.'"). Moreover, we will not interpret zoning regulations in ways that lead to irrational results. See Stowe Club Highlands, 164 Vt. 272, 280 (1995) (refusing to interpret regulation such that it leads to irrational results). Finally, because zoning regulations limit common law property rights, we resolve any uncertainty in favor of the property owner. Bjerke Zoning Permit Denial, 2014 VT 13, ¶ 22. With these provisions of interpretation in mind, we turn to the applicable provisions.

The Property is in the R1 District. In the R1 District, there is a minimum frontage of 250 feet. See Regulations § 303.02. This frontage is listed as an "Area and Dimensional Requirement[]." Id. Pursuant to Regulations § 403.03:

> Any lot created through the subdivision process shall have no less than the minimum required frontage for the district in which such lot is located on all adjoining public highways or access to a public road or waters by way of a right-of-way of not less than 50 feet in width. . . .
>
> . . .
>
> Provided, however, that the minimum requirements may be reduced by the Commission under the conditions set forth in ARTICLE 5 of these Regulations. Areas required under this section (403.03) to satisfy setback requirements for one structure shall not be used to satisfy the same requirements for another structure.

The Regulations further provide for waivers. Section 708 states:

> Through the conditional use review process, the Zoning Board of Adjustment may grant waivers to dimensional requirements Waivers from the dimensional standards may be granted to allow:
>
> A. Mitigation through design, screening;
>
> B. Waivers for structures providing for disability accessibility, fire safety, and other requirements of law; and
>
> C. Provide for energy conservation and renewable energy structures.

As a threshold matter, Appellant asserts that a § 708 waiver cannot apply to a frontage requirement because frontage is not a dimensional standard but instead a safety standard. The Regulations are clear and unambiguous: frontage is a dimensional standard. Throughout the Regulations, most notably in the R1 District section, § 303, frontage is recognized as a "Dimensional Requirement." Regulations § 303.02; see also Regulations §§ 302.02, 304.02, 305.02, 306.02, p. 57-59 ("Minimum Lot Area and Dimensional Requirements Analysis"). Thus, by the Regulations' plain language, frontage is a dimensional standard. There is nothing in the Regulations to support the conclusion that frontage is a safety standard akin to sight lines. "Frontage" is defined as "[a]ny lot line separating a parcel from either a public right-of-way or public waters." Regulations § 801 ("Frontage"). The length of the lot line is the frontage. There is no reference to any type of safety aspect of this lot line nor is there a consideration of sight lines for traffic safety and/or access purposes.

Thus, the Court concludes that frontage is a dimensional standard based on the plain language of the Regulations.[4]

Appellant argues that Regulations § 403.03 precludes waiver of frontage for a lot created by subdivision because he asserts it is more specific than the waiver provision in Regulations § 708. Appellant bases this assertion on In re Pederzani Admin. Appeal. 2024 VT 82, ¶ 12 ("When there are two conflicting provisions in an ordinance, the specific provision is held as an exception to the general provision") (citing In re Lathrop Ltd. P'Ship I, 2015 VT 49, ¶ 31). The Court disagrees that § 403.03 is more specific than the waiver provision in § 708. Instead, Regulations § 403.03 sets forth the general standards for lots and lots created by subdivision. Regulations § 708 goes on to provide specific review criteria for when those general standards may be waived or altered. The waiver provision in § 708 is therefore an exception to the general rules of frontage and setbacks set forth in § 403.03.

Nothing about this conclusion is altered by Regulations § 403.03 reference to waiver of dimensional standards for Planned Unit Developments (PUDs). This provision relates to the PUD process before the Planning Commission. Waivers under § 708 are within the ZBA's authority. Section 403.03 recognizes that reductions in the frontage and setback standards "may" be granted by the Planning Commission through the PUD process but does not state or imply that this is the only way that such deviations may be granted. To follow this interpretation would lead to the result that setback and frontage requirements could only be modified if made in the context of a PUD. PUDs are a small subset of project scopes. That the Planning Commission may alter frontage and setbacks in the PUD process does not eliminate or abrogate the ZBA's authority to issue specific dimensional waivers to applicants as provided by § 708. Instead, the Court interprets the Regulations as a whole. Section 403.03 sets forth the general requirement that lots meet frontage and setback requirements. Then it allows for the Planning Commission to modify frontage and setback requirements in the PUD context and, through § 708, the ZBA to grant waivers of dimensional standards, including frontage and setbacks, as provided therein.

Further, § 403.03 addresses both frontage for lots created by subdivision but also setbacks, generally. See Regulations § 403.03. The Regulations identify six types of dimensional requirements: lot area, frontage, front, side and rear yard setbacks and building height. Section 708 states that the ZBA may grant waivers to dimensional requirements pursuant to the standards therein without

[4] For the same reason, the Court disagrees with Appellant's interpretation that frontage cannot be waived because mitigation cannot be provided by design or screening. This assertion is based on Appellant's argument that frontage is not a dimensional requirement but instead a safety standard. Because frontage is not a safety standard, design or screening mitigation may be relevant.

qualification or limitation. To apply Appellant's logic to the Regulations would render the four of the defined dimensional standards in the Regulations (i.e., all setbacks and frontage) unwaivable. This is inconsistent with the unqualified language of § 708. Thus, the Court declines to adopt such an interpretation.

For these reasons, the material facts are not in dispute and Applicants are entitled to judgment as a matter of law. The Court concludes that Applicants may seek a waiver of the frontage requirement. Thus, Applicants' motion on this issue is **GRANTED** and Appellant's is **DENIED**.

While no party moves for summary judgment on the merits of any waiver request, it is unclear at this time whether the Court may reach the merits of a waiver request in this appeal. Applicants in this appeal seek such review. The Town had previously indicated that it did not object to the Court's consideration of Applicants' waiver request. It had initially appeared that Appellant similarly had no objection to this approach. In his motion for summary judgment, however, Appellant indicates that, while there is no objection to the Court's above determination about whether a waiver is available, generally, he does object to the Court adjudicating the merits of a waiver in this appeal. Because the Court's decision on the pending motions does not resolve the matter, the Court will set this matter for a status conference to discuss how this case will proceed to resolution, which may include a trial on the variance criteria. The parties should be prepared to discuss whether the Court may review the merits of a request for a waiver in this appeal as well.

Conclusion

For the foregoing reasons, there are material facts in dispute relevant to multiple variance criteria. Thus, Appellant's motion for summary judgment on the merits of Applicants' variance application is **DENIED**. Additionally, the material facts are not in dispute and Applicants are entitled to judgment as a matter of law on the issue of whether they may seek a waiver of the minimum frontage requirements for the Property. Thus, Applicants' motion for summary judgment on this issue is **GRANTED** and Appellant's is **DENIED**. Applicants may seek a waiver. The Court will set this matter for a status conference to discuss how this matter will proceed to resolution.

Electronically signed November 10, 2026 pursuant to V.R.E.F. 9(D).

Tom Walsh

Thomas G. Walsh, Judge
Superior Court, Environmental Division