

Town of Moretown Development Review Board
79 School Street, Moretown, Vermont 05660

Minutes and Decision for Hearing Held October 24, 2019

Application No. 19-38: Application of David W. Butsch and Linda L. Butsch, Trustees

The application is for the proposed construction of a “Ground-Mounted Solar Canopy System” at Applicants’ residential property located at 788 Moretown Mountain Road.

Erick Titrud called the meeting to order at 6:30 p.m. The following Board members were present: David Russo, Paula Woods, Gregory Nagurney and Craig Oshkello. The Applicants were present. Also present for the Applicants was Doug Surwillo of Suncommon. Town Zoning Administrator David Specht was also present.

Applicants propose to build a structure over a portion of their existing driveway consisting of four (4) vertical posts and a canopy, with solar panels placed atop the canopy. The Town Zoning Administrator determined that the proposed structure is not a ground-mounted solar canopy system but rather a pergola with solar panels mounted its roof. On this basis, he denied the application for a zoning permit on the grounds that the structure would be within the required setback area.

Applicants appeal the zoning administrator’s decision to the Development Review Board and request a variance of the setback requirement because the proposed structure would be placed within the required setback distance of 65 feet. The Application included a site plan, architectural renderings, plans of the solar system electrical circuitry and photographs showing the proposed structure, structure elevation, and several concept images of the proposed carport. Applicants also submitted a letter from the Town Road Commissioner Martin Cameron.

Applicants own approximately 59 acres on the north and south sides of Moretown Mountain Road. The total road frontage of the lot is 2,716 feet. Applicants maintain their primary residence on a portion of their land along the south side of the road.

Applicants provided an overview of their proposal. Applicants described the structure as a 2-car carport consisting of 4 posts and a roof, with solar panels placed on the roof and stated their intent is to have a covered parking area for their cars adjacent to their house. The dimensions of the proposed structure are as follows: 27’ $\frac{1}{8}$ ” in width by 20’ 1” in depth. The proposed canopy is sloping with the maximum height of 13 feet along the northerly edge - the edge closest to the road. The total area covered by the structure is approximately 540 ft.² and would provide covered parking for 2 cars. Applicants propose to place solar panels atop the canopy structure.

The ‘front’ of the Applicants’ residence (i.e., north-facing wall) is set back from the road centerline a distance of 35 feet. There is a driveway providing access and parking for vehicles. The driveway runs perpendicular to the road and is located easterly of, and adjacent to, the residence. The proposed structure would be constructed over the driveway and would be

detached from the house, though adjacent to it. The proposed carport structure would be 39 feet from the road centerline.

Applicants explained that the area of their property lying to the south of their house and driveway drops off down a steep embankment. Placement of the structure 65 feet from the road centerline, the required setback distance, would result in their cars being parked 32 feet from the edge of the embankment and southerly edge of their lawn, thereby limiting the area of the lawn. It was also explained that the road has been widened and the centerline has changed over time, moving closer to the house. Applicants showed photographs showing the proposed structure, structure elevation, and graphic images of the carport concept.

Applicants request a reduction of the required front-yard setback distance due to the proximity of the steep embankment and impact the structure will have on their back yard if built in conformance with the setback distance. In their Application, Applicants expressly request a variance. Doug Surwillo, speaking on the Applicants' behalf, stated that Applicants seek a reduction of the setback distance pursuant to the conditional use review in Section 5.2 of Moretown Zoning Regulations (the 'Regulations'). He stated that the structure, as designed, was designed to best meet the Applicants' renewable energy goals.

There was extensive dialogue among the Board and Applicants regarding the proper characterization of the structure and whether it is a ground-mounted solar system or whether it is more properly described as a pergola, or carport, with solar panels placed on its roof. Those present also discussed the applicability of the zoning regulations to the solar energy component of the proposed project and whether, and to what extent, solar energy installations are subject to municipal regulation under local zoning. Given the Application request for a variance, particular attention was focused on the standards for issuance of a variance pursuant to Section 6.7 of the Regulations. Additionally, David Russo pointed out that the proposed structure is not a conditional use and, thus, is not approvable under the provisions of conditional use review pursuant to Section 5.2.

The Board discussed whether it wished to conduct a site visit of the property. The consensus of the Board was that no site visit would be necessary and that it would enter into a deliberative session this evening to consider the merits of the Application. Paula Woods moved to close the evidentiary portion of the hearing. David Russo seconded this motion. All voted in favor.

Erick Titrud moved that the Board enter deliberative session to consider the application. Paula Woods seconded this motion. All approved.

The Board then held a deliberative session. The Board resumed its deliberative session on Tuesday, October 29th. It was resolved that Erick Titrud and Greg Nagourney would prepare decisions in accordance with the members' discussion for review and comment. There being no further business the meeting was adjourned.

Findings of Fact, Conclusions of Law and Decision

1. Applicants propose to build a structure over a portion of their existing driveway.
2. The structure consists of four (4) vertical posts and a roof with solar panels placed atop the roof.
3. The structure would be detached from the house, and adjacent to it.
4. The Application requests a variance of the front-yard setback and approval for a ‘ground-mounted solar canopy system.’ The Application includes concept images and depictions of the proposed structure describing it as a carport, or pergola, and showing solar panels mounted on top of the roof.
5. Applicants described the proposed structure as a “2-car carport with 4 posts and a roof” and expressed their desire to have a covered area in close proximity to their house in which to park their cars and to generate energy through the use of solar panels mounted on the roof of the carport.
6. The structure would be built 39 feet from the road centerline of Moretown Mountain Road.
7. The undersigned members of the Board find that the structure is not appropriately characterized as a ‘ground-mounted solar canopy system’. We instead find that the proposed structure is more appropriately characterized as a carport or pergola upon which would be placed roof-mounted solar panels.
8. We first address whether the proposed structure is exempt from regulation under the Moretown Zoning Regulations. We note that Applicants applied for a zoning permit, availing themselves of regulation pursuant to the zoning regulations. Further, Applicants presented no argument that the proposed structure is exempt from municipal regulation.
9. We nevertheless consider Section 4413(b) of Title 24, Vermont Statutes Annotated which sets forth limitations on municipal bylaws. This Section states: “[a] bylaw [] shall not regulate public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248.”
10. Having determined that the structure is a carport or pergola with roof mounted solar panels, the undersigned find that the proposed structure is not a public utility power generating plant or transmission facility as used in 24 V.S.A. § 4413(b). On this basis, we conclude that the Town of Moretown has authority to regulate the structure and its use under the Zoning Regulations.
11. We proceed to review this Application under the relevant provisions of the Regulations. Applicants’ property, including the site of the proposed structure, lies in the Agricultural-Residential District (Ag-Res District) pursuant to Moretown Zoning Regulations, Article II, Section 2.1.
12. Dimensional standards for the Ag-Res District are specified in Table 2.3(4). The Minimum Front Yard Setback is 65 ft.
13. Setback distances are measured from the centerline of the road pursuant to Section 4.5(C).
14. Applicants seek a variance involving a reduction of the setback by 26 feet, from 65 feet to 39 feet.
15. Section 6.7 of the Regulations provides as follows:

Section 6.7 Variances

(A) **Variance Request.** The Development Review Board shall hear and decide upon requests for variance pursuant to the Act [§4469] and appeal procedures set forth in Section 6.6 of these regulations. **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 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 zoning regulations in the district in which the property is located;
- (2) That because of such physical circumstances and 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 necessary to enable the reasonable use of the property;
- (3) That such unnecessary hardship has not been created by the appellant;
- (4) That 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, nor be detrimental to the public welfare; and
- (5) That the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulations and the Town Plan.

Regulations, Section 6.7(A) at pp. 75-76 (emphasis in original).¹

16. The Board finds that Applicants have not demonstrated that unique physical circumstances or conditions peculiar to the Applicants property create unnecessary hardship. Notwithstanding the proximity of the steep embankment, Appellants have not shown that this feature creates unnecessary hardship.
17. The Board finds that Applicants have not demonstrated that there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation or that the authorization of a variance is necessary to enable the reasonable use of the property. Applicants indeed can build the carport structure in conformity with the setback distance. Further, Applicants have not shown that the requested variance of a 26-foot reduction of the setback distance is essential to enable the reasonable use of their back yard.

¹ As noted, the undersigned members of the Board find that the structure is appropriately characterized as a carport or pergola upon which roof-mounted solar panels would be placed and is not a 'ground-mounted solar canopy system'. Similarly, we find that the proposed structure is not primarily a renewable energy resource structure as that term is used in Section 6.7(B). Thus, we have determined that review of the variance request must proceed under Section 6.7(A). We note that, given our Findings, *infra*, the result would be the same.

18. The Board finds that Applicants have not demonstrated that the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulations and the Town Plan. The requested 26-foot reduction in the setback distance is greater than the minimum that would afford relief and does not represent the least possible deviation from the zoning regulations.
19. Based on these findings, the undersigned Board members conclude that Applicants do not meet the criteria for a variance under Section 6.7 of the Regulations.

For the foregoing reason, the request for a variance is denied.

Moretown Development Review Board

Erick Titrud
Erick Titrud

12/3/2019
Date

PaulaM Woods
Paula Woods

12/3/2019
Date

David Russo

Date

18. The Board finds that Applicants have not demonstrated that the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulations and the Town Plan. The requested 26-foot reduction in the setback distance is greater than the minimum that would afford relief and does not represent the least possible deviation from the zoning regulations.
19. Based on these findings, the undersigned Board members conclude that Applicants do not meet the criteria for a variance under Section 6.7 of the Regulations.

For the foregoing reason, the request for a variance is denied.

Moretown Development Review Board

Erick Titrud

Date

Paula Woods

Date



David Russo



Date