

Conditional Use and Variance Hearing  
Stacey and Ian Ambler  
April 13, 2021

*To consider a conditional use and variance request by Stacey and Ian Ambler to extend a lakeside dormer, construct a roof over a deck, and build a storage shed at 115 Cheney Road.*

The application requires a review under the following sections of the Greensboro Zoning Bylaws: 2.7 Shoreland Protection District; 5.4 Conditional Uses; 5.5 Variances, and 8.9 Nonconforming Uses and Structures Within the Shoreland Resource Zone.

**Warnings** were posted on March 17, 2021 at the Greensboro Town Hall, the Greensboro Post Office, the Greensboro Bend Post Office, and Willey's and Smith's Stores. The warning was sent to the applicants and the following abutters and neighboring property owners: Stew and Becky Arnold; and Robert Calcagni, on March 17, 2021. It was published in the Hardwick Gazette on Wednesday, March 17, 2021.

**Development Review Board members present:** Jane Woodruff, Nat Smith, Lee Wright, Wayne Young, BJ Gray, MacNeil, and Janet Travers (alternate).

**Development Review Board members absent:** Linda Romans and Mike Metcalf.

**Others present:** Ian and Stacey Ambler; Stew and Becky Arnold.

**Correspondence from interested persons:** None.

**During the course of the hearing the following exhibits were submitted:** None.

The hearing was conducted by electronic communication (ZOOM).

**Summary of Discussion:**

Ms. Woodruff, chair, began the hearing at 7:03 PM. She noted the hearing was quasi-judicial, explained the procedure for the hearing, and asked the clerk to swear in all those who wished to speak at the hearing. Ms. Woodruff then asked the applicants to describe their proposed work on their cottage at 115 Cheney Road. Ms. Ambler noted the application proposes three projects. The first project is to expand a dormer on the lakeside of the cottage from 48" to 108". This expansion would increase the applicants' ability to enjoy the beauty of the lake. The exterior would conform to the building's current aesthetic.

The second project proposes to build a roof over the back deck on the Cheney Road side of the cottage. The current deck requires repair. A roof would prevent water pouring directly on it from the cottage roof and aid with existing drainage difficulties beneath the cottage. The roof would not extend beyond the current footprint of the deck, which is 12'x13'. The highest point of the roof would be approximately 12'.

The third project is the construction of an 8'x10' shed on the Cheney Road side of the cottage. Mr. Ambler noted that the retaining wall behind the cottage is in need of repair and disruption would occur at that site during normal repair. The homeowners noted the shed would not encroach on abutting landowners, although the shed does not meet lake or road setbacks. The alternative would be to build the shed in the field on the other side of Cheney Road, where it would conform with all setbacks. Placing a small shed in the field would ruin the natural aesthetic of the field and is not compatible with the scale of the landscape, whereas constructing the shed against the house would complement the house. Board members clarified that one

window in the shed would face Cheney Road, and the door would face the south side. The shed floor would be one or two steps above the existing retaining wall level to accommodate the steep grade change. Some discussion revolved around the slab and its use as a retaining wall. Sediment control fencing would be used during construction. In exchange for 80 square feet of impermeable footage for the shed, the applicants' mitigation proposal includes at least 400 square feet of lawn removal, replaced with native vegetation. Abutting landowners Stew and Becky Arnold offered their support for all three projects. They noted they will not be able to see the shed from their windows. They prefer this location for the storage shed, instead of placing a structure in the field.

At 7:38 p.m., Ms. Woodruff thanked the applicants for their proposal and the Arnolds for their sharing their viewpoints. The Board went into deliberative session at 7:38 p.m. and returned into public session to announce their decision at 8:17 p.m.

### **Findings of Fact:**

The Board considered the criteria for a conditiona<sup>l</sup> use permit for the dormer expansion and the covered porch. Based on the application and testimony, the Development Review Board makes the following findings:

### **5.4 Conditional Uses**

#### *B) General Standards*

*The proposed conditional use will not have an adverse effect on:*

1. *the capacity of existing or planned community facilities.* This project will have no effect on existing or planned community facilities.
2. *the character of the area.* The dormer and covered porch complement the cottages in the area.
3. *traffic in the vicinity.* Traffic will not be affected by either project.
4. *bylaws and ordinances presently in effect.* Bylaws and ordinances currently in effect will not be influenced by this proposed construction.
5. *the utilization of renewable energy resources.* Utilization of renewable energy resources will not be altered.

#### *C) Specific Standards:*

1. *The lot must meet the minimum size required for the district unless other standards are given for conditional use lot size in the district.* This 1.03 acre lot conforms to district standards.
2. *Setbacks will be the same as for other permitted uses unless other standards are given for conditional use setbacks in the district.* The cottage is a pre-existing, nonconforming structure. The two proposed projects meet applicable side and road setbacks. The cottage does not meet the lake setback, but neither the dormer nor the roof over the porch will increase the cottage's nonconformity.
3. *Fencing/landscaping may be required for commercial and industrial uses to provide screening if the Board deems it necessary to protect the character of the area.* This standard is not applicable for residential use.
4. *Exterior signs shall not be internally lit and must be compatible in size, materials and workmanship to the area in which they are located.* This standard does not apply to these plans.

5. *The location, on the lot, of structures shall be compatible with other structures in the area affected.* The seasonal cottage and the two proposed projects are similar to surrounding dwellings.

6. *The proposed structure adheres to the uses allowed in the relevant district.* A seasonal, single-family cottage conforms to uses in the Shoreland Protection District.

7. *The proposed structure will not affect noise or air pollution in the area.* Noise and air pollution are not a relevant factor in this proposal.

#### **Decision:**

Based upon these findings, the Development Review Board voted unanimously (7 – 0) to approve the application to extend the lakeside dormer and construct a roof over the deck on the Cheney Road side. The Board determined that the standards for a conditional use permit were met. Alternate Jan Travers voted.

#### **Findings of Fact:**

The proposed shed requires a variance since it meets neither the lake nor road setbacks. The proposed shed is located approximately 130' from the shoreline and 47' from the center of Cheney Road. Based on the application, testimony, and consideration of the criteria for a variance, the Development Review Board makes the following findings:

The Board determined a nonconforming structure may be enlarged or expanded with Board approval, so long as the project compensates through mitigation for lost shoreland buffer, pursuant to:

### **8.9 Nonconforming Uses and Structures Within the Shoreland Resource Zone**

*A) 3. A Nonconforming Structure may be enlarged, extended, reconstructed, expanded, modified or relocated only with the approval of the DRB, subject to conditional use review under Section 5.4. The DRB must determine that the enlargement, extension, expansion, modification or relocation does not increase the degree of nonconformity or else it compensates for lost Shoreland Buffer through Mitigation measures.*

*4. Where the expansion of a Nonconforming Structure is permitted, the DRB shall require the applicant, as a Mitigation measure, to return a significant portion to any mowed or cleared areas in the Shoreland Buffer Resource Zone to a naturally vegetated state with supplemental planting of appropriate non-invasive vegetation.*

### **5.5 Variances**

#### **A) Variance Criteria**

*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 property, and that unnecessary hardship is due to these conditions and not to the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located. To conform to the 150' lake setback and the 50' road setback, the shed must be located in the field on the other side of*

Cheney Road. The Board determined placing an accessory structure in the field would compromise the natural beauty of the undeveloped field.

2. *Because of these unique circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and the authorization of a variance is necessary to enable the reasonable use of the property.* Although the shed could be constructed in the field and conform to setbacks, constructing a storage shed against the cottage represents the most reasonable use of the property.

3. *The unnecessary hardship has not been created by the applicant.* The pre-existing lot was not created by the applicants.

4. *If authorized, the variance will not:*

a) *alter the character of the neighborhood or district.* This accessory structure will not change the character of the neighborhood.

b) *impair the use or development of adjacent property.* The abutting landowners will not be unduly affected by the proposed shed.

c) *reduce access to renewable energy resources.* This is not applicable.

d) *be detrimental to the public welfare.* This is not applicable.

5. *The variance represents the minimum that will afford relief and the least deviation possible from the bylaws and town plan.* Constructing the shed against the cottage and not in the field represents the least deviation from the bylaws and town plan.

**Decision:**

Based upon these findings, the Development Review Board determined that the standards for a variance were met. The Board voted unanimously (7 – 0) to approve the application to construct an 8'x10' storage shed on the Cheney Road side of the cottage. Alternate Jan Travers voted.

**Conditions:**

1. Any and all necessary state and federal permits must be in place before construction begins.
2. The applicants shall compensate for lost shoreland buffer through the mitigation measures they proposed, which specifies not less than 400 square feet of lawn between the house and the lake shall be converted to native vegetation.

Signed:

  
\_\_\_\_\_, chair  
Jane Woodruff

date April 17, 2021

  
\_\_\_\_\_, clerk  
Brett Ann Stanciu

date April 17, 2021

**NOTICE:**

This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding (in person or in writing) before the Development Review Board. Such appeal must be made 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.