

(A) Variance Criteria. The Development Review Board (DRB) shall hear and decide requests for variances as required by 24 V.S.A. §4469(a). In granting a variance, the DRB may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect. The DRB 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 written decision:

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 to the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;

The Eveningside lot is small (0.54 acres), with some irregularities that make the side-setback-obeying build envelope very tight. The lot does not allow the lake setback to be obeyed, but our current proposal is less non-conforming than the existing house, since we are moving the house back from the lake. Add to this the existence of a grove of beautiful mature cedar trees on the east side of the property, and our hardship becomes clear: We cannot place the house in its currently approved location without likely causing the death of the mature cedar trees. Tree experts we have consulted have said the trees will not survive the digging of a foundation so close to their root systems.

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 these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;

We see two alternatives to maintain conformance with side setbacks. The first is to proceed with the current plans and hope for the best. This plan will most likely result in the destruction of some beautiful trees within the lakeshore protection district, which we (and the community) would be very sad to lose.

The second is to proceed with the boundary adjustment we have proposed, which involves taking a 20-foot by 163-foot protuberance of land that connects Lidie Howes's property to the lake and making it part of the Eveningside property. This gives us room to shift the house 8-10 feet west, avoid digging so close to the mature cedar trees (or any other mature trees), and still obey side setbacks.

3. The unnecessary hardship has not been created by the appellant;

The hardship is created by a small and unusual lot size and shape, and the existence of the mature cedar trees, none of which were created by us.

4. The variance, if authorized, will not:
  - (a) Alter the essential character of the neighborhood or district in which the property is located;
  - (b) Substantially or permanently impair the appropriate use or development of adjacent property;
  - (c) Reduce access to renewable energy resources;
  - (d) Be detrimental to the public welfare.

I believe all these conditions are met. With respect to making Lidie Howes's property less conforming, it is true that her lot size will go from approximately 0.9 acres (already non-conforming) to approximately 0.84 acres (more non-conforming). However, if you examine the effect of this increase in non-conformance, you will find that because of the unusual shape of the transferred land, it has no practical effect on the setbacks, build envelope, or any other aspect of her property. See attached annotated material for more information.

5. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

I believe this condition is met. The variance makes the lot closer to the lake less non-conforming (which seems like a good thing), the lot farther from the lake slightly more non-conforming (but in a way that has no practical negative effect), ensures the safety of the mature cedar trees, and does not alter the strong mitigation plan that restores the shoreline to its natural state.