



**WAITSFIELD DEVELOPMENT REVIEW BOARD
FINDINGS OF FACT AND NOTICE OF DECISION**

Application # 3732: Appeal of ZA's Decision approving Zoning Permit # 3726

Land Owner: Alan Hammersmith and Kate Roche

Appellant: Scott Fleckenstein

Property Address: 274 Sugar Glen Drive

Parcel Number: 40035.000

Meeting Date: December 13, 2016

Other Attendees: Alan Hammersmith, Kate Roche, John Welter (abutter) and Caitlin Fleckenstein, wife of Appellant

A. GUIDING ORDINANCE and POLICY PROVISIONS

1. a. Town of Waitsfield Zoning Bylaws, as adopted March 2, 1971 and amended through September 26, 2016:
 - b. Table 2.07 Agricultural-Residential District Dimensional Standards.
 - c. Section 6.04 Appeals.
 - d. Section 7.02 Definitions.
2. Waitsfield Subdivision Regulations, as adopted on January 21, 2008.
3. Waitsfield Town Plan, as adopted on October 22, 2012.
4. 24 V.S.A. Chapter 117.

B. MATERIALS SUBMITTED

1. On October 28, 2016 the Appellant, Mr. Fleckenstein, submitted a notice of appeal to appeal a ZA Decision, namely a Zoning Permit # 3726, issued October 14, 2016.
2. The Zoning Administrator submitted the following materials:
 - a) Application # 3726 for a Zoning Permit, received October 5, 2016 and approved on October 14, 2016;
 - b) Application # 3677 for a Zoning Permit, received January 18, 2016 and approved on January 21, 2016;

- c) Findings of Fact and Notice of Decision, dated December 11, 2008 granting Variance # 3193 for the subject property;
- d) October 24, 2008 and October 28, 2008 minutes for the hearings regarding the application for Variance # 3193.

C. PROPOSED FINDINGS OF FACT

1. On October 28, 2016, within the 15 day appeal period, Appellant, Scott Fleckenstein, filed his appeal of the Zoning Administrator's Decision.
2. The Zoning Administrator submitted the November 23, 2016 hearing notice to the Valley Reporter on November 29, 2016 for its December 1, 2016 issue; mailed it to the abutters, owner, and appellant on November 29, 2016; and posted the hearing notice on November 29, 2016.
3. The Findings of Facts and Notice of Decision for Variance # 3193, among other things, permitted a lesser stream setback and put a size limitation on the house that could be built.
4. The Application for a Zoning Permit # 3677 provided a dimensioned drawing of the proposed house and garage which conforms to the dimensions of the footprint in the August 19, 2008 plat approved as part of the Variance. The Application for a Zoning Permit # 3726 only slightly amended the prior application by adding 2 feet to the front door overhang and 2 feet to the width of the deck. The other dimensions and footprint were identical to the drawing in Application # 3677.
5. Appellant was represented by his wife at the hearing and she was asked at the start of the hearing to explain their position. Ms. Fleckenstein stated the basis of their appeal is that they do not believe the building as proposed meets the terms of the Variance and wanted the Board to determine specifically: 1) Does the proposed building meet the required stream setback?, 2) What does the 1600 square footage requirement in the Variance mean?, 3) Is the garage included in the square footage requirement?, and 4) Does the proposed building meet the square footage requirement?
6. Both Ms. Fleckenstein and Mr. Welter testified that they do not believe the first Zoning Permit was ever posted at the property as is required in order to give proper notice and start tolling the appeal period. Since there was no testimony to the contrary, the Board will accept the assertion that proper notice was not provided and therefore both Permit applications may be considered in this appeal.
7. The proposed building, if built in the position indicated on the plat plan, appears to meet the stream setback requirement of 55 feet in the Variance.

8. There are some errors in the calculations of the square footage in the applications and confusion and inconsistency in the meaning of the square footage requirement in the Variance and why it was required. Therefore, the Variance Decision and minutes of related hearings need to be considered. It is reasonable to conclude from a review of these materials that the major concern of the neighbors and the Board was encroachment toward the stream. Therefore the most likely meaning of the square footage requirement was to minimize the footprint of the total **buildings**, rather than a concern about the interior volume of the **house**, which would be a highly unusual measurement for any zoning consideration. In either case, the house size is in substantial compliance with the variance. The footprint of the buildings will be approximately 1408 square feet (house at 832 and garage at 576). If the interior volume of the house were to be considered the relevant test, the proposed building should also meet that test. Accounting for the exterior walls, the first floor volume would be approximately 720 square feet and the second floor (with less useable floor space due to the saltbox design), approximately 600 square feet, or 1320 total. The basement space is not relevant in any calculation.

D. CONCLUSIONS OF LAW

Based on its review of the application materials, submitted materials, presented testimony, and Findings of Fact above, the Waitsfield Development Review Board hereby concludes that the Zoning Permit Applications # 3726 and #3677 meet the stream setback and square footage requirements and were properly approved by the Zoning Administrator.

E. DECISION

The appeal is denied.

Dated at Waitsfield, Vermont this 22 day of December, 2016 for the Town of Waitsfield Development Review Board by:



Chris Cook, Development Review Board Chair

Voting in the Affirmative: John Donaldson, Gib Geiger, Brian Shupe, Mike Kingsbury, Chris Jernigan and Chris Cook

Absent: Rudy Polwin

Appeal

Pursuant to Title 24 VSA §4471 and §4472, an interested person who has participated in the review of this application may appeal this decision to the Environmental Division of the Vermont Superior Court by filing a Notice of Appeal directly to the Court, 32 Cherry Street, Suite 303, Burlington, Vermont 05401, by certified mail within thirty (30) days of the date this decision is issued. A copy of the notice must also be sent to the Zoning Administrator or the Municipal Clerk who is required to provide a list of interested persons to the appellant within five days of receipt of the Notice. The appellant is required to send a copy of the Notice, via certified mail, to each interested person.