**TOWN OF SOUTH HERO, VERMONT**

**DEVELOPMENT REVIEW BOARD**

**DECISION DATED January 24, 2024**

**APPLICANT**

**Name: Norm Benoit**

**Address: 111 East Shore Rd., Grand Isle, VT 05458**

**LANDOWNER**

**Name: J. Henry Scott**

**APPLICATION**

**Type: Request for Waiver to replace an existing seasonal home within the side and lake setbacks.**

**Number: 24-33-SB041**

**PROPERTY**

**Location: 41 Sunset Beach Rd.**

**Hearing Date: January 10, 2024**

Norm Benoit, representing property owner J. Henry Scott, submitted an application on October 24, 2023 requesting a setback waiver per Sec. 305 to replace a seasonal home within the lake and side setbacks at 41 Sunset Beach Rd. The hearing was originally warned for December 13, 2023, but was postponed to January 10, 2024 due to the lack of a quorum at the December 13 meeting. Per Section 305 of the South Hero Development Regulations, a warning for the public hearing appeared in the November 22, 2023 issue of the Islander and was posted in the Town Office, the Post Office, and the Town Library, and abutters to the property were notified. A hearing was held on January 10, 2024. A list of those present and participating in the hearings is included in the minutes.

**During the course of the hearing, the following exhibits were submitted:**

1. Town of South Hero Development Regulations, effective September 13, 2021.
2. Setback Waiver Application, dated October 23, 2023 and rec’d October 24, 2023.
3. Building permit application for a replacement 4BR home at 41 Sunset Beach Rd., dated October 23, 2023. Deferred for setback waiver review by DRB at December 13, 2023 hearing.
4. Revised Site Plan (Sheet A1) by NLB Construction Consulting, LLC, showing proposed replacement home, dated October 26, 2023; rec’d December 5, 2023.
5. North elevation of proposed replacement home showing comparison to the existing structure (Sheet SK11), by NLB Construction Consulting, LLC. The sheet includes views of the existing structure from abutting properties and photos of surrounding homes, dated October 23, 2023; rec’d October 24, 2023.
6. East and west elevations (Sheet A5) and north and south elevations (Sheet A6) of proposed replacement home, by NLB Construction Consulting, LLC, dated October 18 and 20, 2023; rec’d October 24, 2023.
7. Floorplan for first floor (Sheet A2), second floor (Sheet A3), and basement (Sheet A4) by NLM Construction Consulting, LLC, dated October 20, 2023; rec’d December 5, 2023.
8. Sections and Details (Sheet A7) by NLB Construction Consulting, LLC, date October 20, 2023; rec’d December 5, 2023.
9. Foundation Plan (Sheet F1) by NLB Construction Consulting, LLC, date October 18, 2023; rec’d December 5, 2023.
10. Walkout Basement (Sheet SK10) by NLB Construction Consulting, LLC, dated October 27, 2023; rec’d December 5, 2023.
11. Warning ad, Abutters’ Notice, and Hearing Letter for the November 22, 2023 DRB Setback Waiver Review.
12. Staff report for the December 13, 2023 DRB hearing.
13. Copy of Shoreland Protection Draft Approval, permit number 4168-SP, no date given; rec’d from the Applicant at the hearing.
14. Email from James Preston, dated and rec’d December 12, 2023, entered into the record on January 10, 2024 as Exhibit #1.
15. Email from Charlie Tipper, dated and rec’d December 12, 2023, entered into the record on January 10, 2024 as Exhibit #2.
16. Email from Ginny Randlett, dated December 12, 2023 and rec’d December 13, 2023, entered into the record on January 10, 2024 as Exhibit #3.
17. Email from Michael Hopwood, dated and rec’d December 13, 2023, entered into the record as Exhibit #4.
18. Draft minutes from January 10, 2024 hearing.

Based on the applications, supporting documents, and testimony of Norm Benoit, **the Development Review Board makes the following Findings and enters the following decision:**

**Findings:**

1. 41 Sunset Beach Rd. is a .25-acre non-conforming lot in the Shoreland Zoning District. The lakefront lot is 75-ft. wide and 146-ft. deep. Sunset Beach Rd. is a private road with a 50-ft. wide right-of-way.
2. There is an existing 1 ½-story, 4BR seasonal home, and a 135sf shed on the property. The shed conforms neither to the south boundary nor to the right-of-way and is proposed to be removed. Zoning notes on Sheet A1 state the home is approx. 9 feet from the south boundary and 59 feet from the mean level of the lake to the west wall of the home. An 8’x8’ attached deck on the lake side of the home reduces the lake setback to 51 feet. The home conforms to the north and east (ROW) boundaries.
3. A non-conforming 260sf lakefront deck with stairs descending to the lake will remain.
4. The Applicant proposes to replace the existing 1 ½-story non-conforming home with a 2-story home that will utilize the non-conforming footprint and expand into the conforming space on the lot.
5. The existing home is 22’6”-tall. The Applicant stated the proposed replacement 2-story home will be 9 feet taller, with a total height of 31’6” to the highest ridge from the first floor.
6. Based on Sheet A1 and the building section shown on Sheet A7, the height of the structure is calculated to be 33.275’ above average natural grade.
7. Excavation on the lake side of the home will allow for a walk-out basement, with the sides of the excavated area supported by gabion walls.
8. The basement level will have one bedroom, a bath, and additional living and storage space, with 10-ft. ceilings. The first floor will include a kitchen, bath, and additional living space, with 11-ft. ceilings. The second story will have the remaining 3 bedrooms, bathrooms, and laundry. The ceilings on this floor will be 10 feet. The peaks of the new home will have an east/west orientation with no attic storage.
9. The existing home is seasonal based on the Town Listers’ card. The Applicant stated that the replacement home will be year-round.
10. Based on the Listers’ card, the first-floor area of the existing 1 ½-story structure is 1040sf, and the second level is 728sf. The majority of the existing home is non-conforming based on Plan Sheet A1.
11. The replacement home will not increase the non-conforming area on the first floor. The additional full second floor will increase the degree of non-conformity.
12. Although the structure is proposed to be on the same footprint in the nonconforming space, Sheet A7 shows the added structure height within the side setback.
13. A draft approval from Shoreland Protection has been issued and was presented to the Board at the hearing.
14. Board members noted that the proposed excavation to create the walk-out basement will slope toward the house. The Applicant stated that runoff options have not yet been engineered.
15. Comments from neighbors included concerns about the size of the proposed structure being much greater than surrounding properties.

DRB Chair Tim Maxham closed the hearing on January 10, 2024.

**Conclusions of Law:**

1. Per Section 305. (Setback Waiver), structures in the Village and Shoreland Zoning Districts are eligible for setback waivers.
2. Per Section 305.D.1 (Review Standards), the application does not represent the least deviation possible from the South Hero Development Regulations. The additional height and added non-conforming space increase the degree of non-conformity.
3. Per Section 505.D.1 (Non-Conforming Structures), a replacement structure cannot increase the degree of non-conformity within the setback (i.e. changes in height of the structure within the setback or increase in overall volume of the structure within the setback).
4. The proposed height of the replacement home exceeds surrounding properties significantly, creating an undue adverse effect on the character of the neighborhood. Per Figure 3.2 – 2.B, the unfavorable impact can be avoided through site and design modifications.

**On January 24, 2024, G. Hunt moved to approve the setback waiver application, with the findings of fact listed; N. Hayward second. No members voted to approve the application;** **T.** **Maxham; N. Hayward; M. Welch; G. Hunt; J. Brightwell; D. Patterson; and L. Kilcoyne voted to deny the application. The Application is denied.**

**Dated: January 24, 2024**

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**For the Development Review Board**

## APPEAL RIGHTS

Any appeal of this decision must be filed with the Superior Court, Environmental Division (located at 2418 Airport Road, Suite 1, Barre, VT 05641-8701) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court [over] Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. §1431 and the 5% surcharge required by 32 V.S.A. §1434a(a). A copy of this appeal must be filed with the Zoning Administrator or the Town Clerk within thirty (30) days from the date of issuance.