

**TOWN OF SOUTH HERO, VERMONT  
DEVELOPMENT REVIEW BOARD  
DECISION DATED September 25, 2024**

**APPLICANT**

**Name:** Mark Clifford

**Address:** 67 Martin Rd., South Hero, VT 05486

**LANDOWNER**

**Name:** Gordon Stewart

**APPLICATION**

**Type:** Boundary Adjustment/Setback Waiver to build a replacement home on a non-conforming lot.

**Number:** 25-02-LD041

**PROPERTY**

**Location:** 41 Lake Dr.

**Hearing Dates:** August 14, 2024 and September 11, 2024

Mark Clifford, representing landowner Gordon Stewart, submitted an application on June 12, 2024, requesting a boundary adjustment and setback waiver to replace a seasonal dwelling on a pre-existing, non-conforming lot at 41 Lake Dr. Per Section 805 of the South Hero Development Regulations, a warning for the public hearing appeared in the July 18, 2024 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. The hearing began on August 14, 2024 and recessed to September 11, 2024 where it concluded. A list of those attending 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 January 1, 2024.
2. Boundary Line Adjustment Plat for the Lands of Gordon Stewart (LD041) and Mark Clifford (MR067) by Button Professional Land Surveyors, dated July 30, 2024; rec'd August 1, 2024.
3. Application for Setback Waiver, dated and rec'd June 9, 2024.
4. Plans by KAS Engineering, rec'd August 1, 2024:
  - Proposed Redevelopment Site Plan, sheet SP.1, dated June 28, 2024.
  - Existing Conditions Site Plan, sheet EX.1, dated July 3, 2024.

- Site Development Detail and Notes, sheets DT.1 and DT.2, dated July 3, 2024.
- 5. Gordon Stewart Precipice House architectural drawings by McLeod Architects, dated June 17, 2024; rec'd August 1, 2024:
  - Level 1 Floor Plan, sheet A-102.
  - Level 2 Floor Plan, sheet A-103.
  - Exterior Elevations, sheet A-200.
  - Sheet A14 – Sections
- 6. Geotechnical Engineering Report by Geo Design, Inc., date July 9, 2024; rec'd August 8, 2024.
- 7. Warning Ad, Abutters' Notice, and Hearing Letter for August 14, 2024 DRB hearing.
- 8. Staff report by Zoning Administrator for August 14, 2024 hearing.
- 9. Minutes from the August 14, 2024 DRB hearing.
- 10. Staff report for the September 11, 2024 DRB continued hearing.
- 11. Updated Site Plan by KAS, rec'd at the hearing on September 11, 2024; entered into the record as Exhibit #1.
- 12. Draft Minutes from the September 11, 2024 DRB hearing.

Based on the application, supporting documents, and testimony of Mark Clifford, Steve Diglio (KAS), and Rory Carmody (Architect), **the Development Review Board makes the following Findings and enters the following decision:**

**Findings:**

**Boundary Adjustment**

1. 41 Lake Dr. is a pre-existing, non-conforming 0.22-acre lakefront lot at the intersection of Lake Dr. and Martin Rd. Lake Dr. is a private road with a 25-ft. right-of-way. Martin Rd. is a Town road with a 50-ft. right-of-way. The lot is in the Shoreland zoning district.
2. A 1 BR non-conforming seasonal home on the lot was removed earlier in summer 2024. The footprint of the camp touched the boundary with 67 Martin Rd.
3. A corner of a covered stone patio and a small portion of a lake-access structure at 67 Martin Rd. encroached onto the 41 Lake Dr. lot.
4. The Applicant is requesting a boundary adjustment between 41 Lake Dr. and 67 Martin Rd. to correct the encroachments and to create adequate space for a replacement home and wastewater system on 41 Lake Dr. Both property owners have agreed to the proposed adjustment to the boundary.
5. The proposed boundary adjustment will result in an equal land swap between the two properties. 41 Lake Dr. will remain 0.22 acre, and 67 Martin Rd. will remain 0.17 acre.
6. An approx. 23'x16' (368 SF) area is illustrated in the boundary adjustment plat by Button Surveying and was identified by the surveyor as having no title to either lot. It is outside the Martin Rd. and Lake Dr. rights-of-way. The surveyor recommended a legal opinion as to the ownership of this land.
7. At their August 26, 2024 meeting, the South Hero Selectboard agreed to quit claim release any land outside the Martin Rd. right-of-way between 67 Martin Rd. and 41 Lake Dr.

### **Setback Waiver**

8. 41 Lake Dr. is bordered on the northeast by Lake Dr., on the northwest by 67 Martin Rd., to the southwest by the lake, and to the southeast by 39 Lake Dr. Martin Rd. is adjacent to the north corner of the lot.
9. A steep slope to the lake, the 75-ft. lake setback, and the only available location for the septic system in the east corner of the lot limit the available space for the replacement dwelling.
10. The proposed 757 sf footprint is being pushed back from the edge of the of the bank at the recommendation of the geotechnical engineering report. Only the southeast face of the structure will remain within the lake setback.
11. The setback from the shared boundary with 67 Martin Rd. is 7.25 feet, and the northeast (back) of the structure is 18.2 feet from the edge of the Lake Dr. right-of-way. It conforms to the southeast boundary.
12. A pervious driveway, with turnaround, enters the property at the intersection of Martin Rd. and Lake Dr.
13. A cedar hedge along Lake Dr. will provide screening of the septic system. Another cedar hedge will be added along the shared boundary with 67 Martin Rd.
14. The original single-story camp structure varied in height from 17 to 21 feet, following the slope of the lot. The replacement home is proposed to have 2 stories with a flat roof, and a height of 22 feet. Like the original home, the new home will have 1 bedroom.
15. The septic system is designed for year-round use, but the owner intends to only occupy it seasonally.
16. The engineer stated that the wastewater permit application will be submitted to the State once the DRB approves the boundary adjustment and setback waiver.
17. The home's foundation will be a slab with an 8-ft. deep foundation wall on the lake side to stabilize the structure, per the Geotech study.

### **Conclusions of Law:**

- A. The survey plat meets the requirements of Table 4.1 (Boundary Line Adjustment).
- B. Per Table 2.1 (Allowed Uses), seasonal and single-household dwellings are permitted in the Shoreland zoning district.
- C. Per Section 305 (Setback Waivers), structures in the Shoreland zoning district are eligible for setback waivers.
- D. Per Section 305.D. (Review Standards):
  1. **Least Deviation** – The replacement dwelling is being moved further from the lake at the recommendation of the Geotech report. It remains a 1-bedroom home and continues to conform to the southeast boundary. The only location for the septic system reduces the limited amount of conforming space on the lot. The replacement structure is only 1 foot taller than the original structure.

2. **Undue Adverse Effect** -- The proposal will have no undue adverse effect on the character of the neighborhood. Most of the lakefront lots on Lake Dr., in addition to 67 Martin Rd., are non-conforming. The abutting property owners voiced approval of the final proposal.
3. **Screening** – Cedar hedges will provide screening for the home at 67 Martin Rd. and the home directly across Lake Dr.

**On September 25, 2024, G. Hunt moved to approve the applications for a boundary adjustment and setback waiver, with the findings of fact listed and with the following Conditions: M. Welch second. Whereas Final Approval was granted to the applications with Conditions, with the following people voting in the affirmative: T. Maxham; D. Patterson; L. Kilcoyne; M. Welch; G. Hunt; N. Hayward; T. Mullen; and J. Brightwell.**

**Conditions:**

1. The two landowners shall comply with all evidence as presented at the hearing or as amended by this decision.
2. The two owners will pursue legal resolution of the ownership of the gore.
3. The two owners will submit a final plat documenting resolution of the ownership of the gore.
4. It will be the Applicants' responsibility to obtain all required State permits and submit copies to the Zoning Administrator.
5. The Town of South Hero's responsibilities are limited to ensuring compliance with the approvals and permits issued by the Town of South Hero. The Town accepts no responsibility for compliance with the conditions of any permits or approvals issued by any other entity. The Town of South Hero will not be liable for the failure of the applicants to carry out their duties and responsibilities.

**Dated: September 25, 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) 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 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.*