

From: Bruce Johnson manager@eastmontpeliervt.org

Subject: Follow-up on Setbacks

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BJ

Hi All:

I realized after last night's meeting that I had forgotten to provide an important proviso to my "measure off centerline" mantra. The concept of using the road centerline as the measuring point for front setbacks is solid: it's almost always the way setbacks and rights-of-way are measured in the field (in most circumstances no one really knows where the actual right-of-way is located; most modern surveys, including when the town purchases additional easements for road improvements, are based off of centerline measurements) and it eliminates the "the right-of-way is over here – the road has shifted over time" game that was occasionally played in the past (road shifts claims might be true, but the specifics are impossible to detail; this issue is compounded by the fact road layouts generally have rights-of-way measured point-to-point while the road itself meanders; the whole issue compounded again by the fact road widths have vastly expanded from the 1800s, usually in the direction of least resistance). Bottom line: we can pretend that we know where the rights-of-way are located, but really all we tend to know is the width of the right-of-way (and even that is sometimes iffy), which is then applied by centering the r-o-w on the mid-point of the road. State statute (19 VSA §32) says: "A roadway width of one and one half rods on each side of the center of the existing traveled way can be assumed and controlled for highway purposes whenever the original survey was not properly recorded, or the records preserved, or if the terminations and boundaries cannot be determined." An example of how this works is US Rte. 2 through EM Village – we know the road was laid out at 4 rods, but the point-to-point specifics are difficult to determine and the state has essentially given up. It treats the road as 3 rods (the classic 49.5 feet) on center and purchases whatever it needs outside of that.

There is one major hiccup in this measure-from-centerline concept – sometimes the known, mapped right-of-way is significantly larger than 3 rods. For instance, parts of Towne Hill Road and Gallison Hill Road are 4 rods. Recent development roads, like Boulder Ridge, are 60 feet. This was a known issue, but the effect on setback is minimal: the Zone D Towne Hill Road setback is 75 feet from centerline, so the total outside of the r-o-w is still 42 feet (as opposed to 50.25 feet for 3 rod roads), acceptable to the Planning Commissioners at the time as the actual minimum distance from centerline to structure is the same. This logic falls apart, however, when the setbacks get significantly smaller or the rights-of-way get significantly larger. The PC dealt with the most obvious situation, road shifts on US 2 & VT 14 that resulted in very wide r-o-ws in certain places, by instituting the added setback rule for state routes, requiring the setback to be the actual dimensional standard or state r-o-w plus 15 feet, whichever is larger. The PC chose to ignore the limited instances on town roads where wide r-o-ws occur, such as with cul-de-sacs (a standard 100-foot radius would leave 25 feet of r-o-w beyond the 75-foot Zone D, where most cul de sacs are located, setback). There's no danger of a structure being permitted in a town right-of-way since the town either fully controls or outright owns the r-o-w, but the appearance of this conflict is a bit unsettling. If the PC is now actually pondering decreasing front setbacks, this has the potential to become more of an issue.

And now, finally, what I forgot to say last night: I recommend that the PC add a full-town secondary setback clause that matches the one in place now for state routes (including the

secondary setback clause that matches the one in place now for state routes (including the “whichever is larger” concept). I don’t believe there’s anything magical about the 15-foot distance chosen for the current regs – anything that ensures the setback extends beyond the r-o-w would seem to do the trick.

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