TOWN OF RANDOLPH, VERMONT
DEVELOPMENT REVIEW BOARD

MEMORANDUM OF DECISION

(Findings of Facts, Conclusions of Law, and Decision)

APPELLANTS: Jeremy and Saige Vorce
38 Thayer Brook Road
Randolph, VT 05060

PERMIT NO.: Z08-42

PROPERTY OWNERS: Appellants

I. INTRODUCTION

On May 27, 2008, **Jeremy and Saige Vorce** ("Appellants") filed an application for a zoning permit for a project generally described as **the construction of two roofs over a walkway behind a single-family residence** . The subject property is parcel number **246002** which is **0.60 acres** in size and located at **38 Thayer Brook Road**. The application was deemed complete pursuant to the Development Review Board ("Board") Rules of Procedure Section 301 on May 29, 2008.

Under the Randolph Zoning Regulations ("Regulations"), projects are reviewed based on the site plan, conditional use and/or any other applicable criteria of the Regulations. Before the Administrative Officer ("Administrator") may grant a permit, the Board must find that the project complies with all applicable criteria and approve the site plan, the conditional use and/or provide any other approval, as required.

Decisions must be stated in the form of Findings of Facts and Conclusions of Law. In rendering this decision, the Board relied on the following:

1. Sworn testimony presented to and evidence received by the Board during the first and final public hearing held on June 24, 2008;
2. Documents contained in this application's file, the Regulations, Town Plan and the Randolph municipal records.

The Board closed the public hearing on June 24, 2008 and rendered an oral decision in this matter. This written decision is required pursuant to 24 VSA ch. 36 §1209 and supercedes the oral decision.

II. DETERMINATIONS BY THE ADMINISTRATOR

The Administrator has made the following determinations:

1. The subject property is in the Apartment-Residential (AR) District.
2. The project requires that a variance be granted because the structures do not meet the rear yard setback requirement.

On May 28, 2008, upon a request for a variance by the Appellants, the Administrator referred the application to the Board for review and approval as determined.

III. PARTICPANTS

For the purposes of this application, "interested persons" are those who fulfill the requirements of 24 VSA ch. 117 §4465. The Appellants and Joel Tillberg were the only participants in this proceeding.

Participating Board members were John Becker, J. Kenneth Currier, Frank Reed and Krista Rumrill. Chair Joel Tillberg recused himself from this proceeding and Vice Chair Reed presided as Acting Chair.

IV. FINDINGS OF FACTS

The following findings are facts that were entered into the record for this application and relied upon by the Board in formulating its conclusions and decisions. While other evidence may have been or is also entered into the record, if it is not included herein, the Board has determined that it is either not relevant evidence or that it is not a fact. In making the following findings, the language contained in the five criteria in 24 VSA ch. 117 §4468 has been summarized.

Need for a Variance/Project Description

1. The Appellants have filed an application for the construction of 8-foot by 16-foot roof over a walkway on the back right side of a single-family dwelling and a similar 8-foot by 21-foot roof on the back left side of the house. *(application)*

2. The subject property is abutted on the north side by property owned by the railroad and which is 100 feet wide. *(application and testimony of J. Vorce)*

3. The subject property is in the AR District, which has a 30-foot rear yard setback requirement. The proposed setback of the roofs to the rear yard is under 30 feet at all points. *(Randolph Zoning Regulations and application)*

CRITERION 1
Uniqueness of the property and hardship

4. The subject property is abutted on the north side by property owned by the railroad and which is 100 feet wide. The property is triangular-shaped, the point of which is where the house is located. The remaining part of the property has a brook running through it and steep slopes between the road and the brook and between the house and the brook. There are no other properties in the vicinity that have all of these attributes. *(application, testimony of S. Vorce and Exh. #1)*

5. When the Appellants purchased the property in 2007, they were not aware that the railroad property was so wide. The abutters across the road even released to the Appellants a right-of-way easement across their property that is technically that of the railroad. *(testimony of S. Vorce)*

6. The existing house was permitted several years ago to replace another house. *(application and testimony of S. Vorce)*

7. The back door to the house is on the right side and is the main entrance in the winter time as the front door, being so close to the road, is inaccessible due to snow accumulation. As the eaves of the house are over the back door, a roof over it is needed for safety reasons (i.e. so falling snow or ice accumulation doesn't injure people using the door). *(testimony of S. Vorce)*

8. Water from the house on the rear left side runs to the right side and aggravates the dangerousness of the using the rear door in winter, therefore a roof on the left side is needed to alleviate that condition. *(testimony of S. Vorce)*

9. The entire back of the house does not meet the rear yard setback requirement. *(application)*

CRITERION 2
Ability to be developed in strict conformity with the zoning regulations

10. Due to the topography, brook, and shape and narrowness of the lot, no structure could be built and meet the setback requirements. *(application, testimony of S. Vorce and Exh. #2)*

Reasonable use of the property

11. The property is currently used as a single-family residence with a detached garage. Safety of the residents is a reasonable request and is contingent upon safe access throughout the year. Without the roofs, this safe access is not possible. *(application and testimony of S. Vorce)*

CRITERION 3
Creation of the hardship

12. The hardship is caused by the topography, brook and shape and narrowness of the lot. *(application)*

CRITERION 4
Affect on the character of the neighborhood or district, development of adjacent property and public welfare

13. The surrounding area is a residential neighborhood. The adjacent properties are railroad tracks to the north with single-family residences on the other side, and single-family residences on all other adjacent properties. *(application and Exh. #2)*

14. The proposed project will not impair the appropriate use of or development on adjacent properties. *(application)*

Access to renewable energy resources

15. The proposed project will not affect access to renewable energy resources. *(application)*

CRITERION 5
Minimum variance and least deviation from the zoning regulations

16. To provide adequate protection in the winter, 8-feet of depth of the roofs is necessary. *(testimony of S. Vorce)*

V. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board makes the following conclusions regarding the project described in the application referred to above and including the Appellants' representations at the public hearing:

Variance Criteria

1. There are unique physical circumstances or conditions, including irregularity and narrowness of lot shape, exceptional topographical and a brook, peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulations in the neighborhood or district in which the property is located.

2. Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

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

4. The variance will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.
5. The variance represents the minimum variance that will afford relief and represents the least deviation possible from the zoning regulations and from the plan.

VI. DECISION[1]

Based upon the foregoing Findings of Facts and Conclusions of Law, the variance is hereby granted for the construction of two roofs on the back of an existing single-family residence as applied for in zoning permit application #Z08-42 and including the evidence and testimony entered into the record as Findings of Fact.

Dated at Randolph, Vermont this 29th day of July, 2008.

RANDOLPH DEVELOPMENT REVIEW BOARD

/s/ Frank Reed, Acting Chair	/s/ John Becker
/s/ J. Kenneth Currier	/s/ Krista Rumrill

[1] An interested party (as defined in 24 VSA §4465) who participated in this proceeding may appeal this decision to the Vermont Environmental Court within 30 days of the date of the decision, for a fee of $225 and a notice in writing, certified mailed to the Environmental Court, giving reasons for the appeal, and a copy mailed to the Zoning Administrator. Failure to appeal this decision may prevent any party from arguing against its elements in a future hearing or appeal. 24 VSA §4472.