

Town of Bolton Development Review Board

Bolton Town Office
3045 Theodore Roosevelt Highway
Waterbury, VT 05676
802-434-5075

In re: **Barkyoub, Carpenter** | Application #2013-21-CU
Conditional Use Approval/Setback Waiver
January 28, 2014

Applicants

Applicants:

Kenneth Barkyoub Jr. and Sally Carpenter
87 York Road
Jericho, Vermont 05465

Application

(Application materials on file at the Bolton Town Office, procedural history attached.)

The applicants request a waiver of the minimum front setback requirement under Section 3.8(B) (Nonconforming Structure) of the Bolton Land Use and Development Regulations to replace an existing 4'x8' open deck on the front of a pre-existing nonconforming single family dwelling (mobile home) with an addition, consisting of an enclosed 6'x12' front porch and entrance, for use as a mudroom and to minimize heat loss from the main dwelling. The dwelling is on a pre-existing, nonconforming 0.23 acre lot located at 87 York Road (ID # 1-0070087) in the Rural I (RI) District. The existing dwelling and deck are located partially within the York Road right-of-way.

The applicants also requested a waiver to replace a 4'x8' rear deck with a 6'x33' enclosed rear porch and entrance for use to store firewood and reduce heat loss; but it was subsequently determined that, because the rear addition met applicable setback requirements, no waiver from the DRB was required for this portion of the project.

This application has been reviewed by the Bolton Development Review Board (DRB) under the following applicable standards of the Bolton Land Use and Development Regulations (BLUDR) in effect as of January 26, 2005, and as amended through August 9, 2010. The Development Review Board's procedural history and relevant findings are attached.

Decision

- Denied
- Approved
- Approved with Conditions:

1. The front addition to the existing dwelling, to include an enclosed porch and entrance to be constructed within the right-of-way of York Road, shall not exceed six (6) feet in width by eight (8) feet in length, as necessary to minimize encroachment within the road right-of-way.
2. The applicants must obtain a zoning permit from the Zoning Administrator prior to beginning site work and construction. In the event that a zoning permit has not been obtained within one year of the date of this decision, DRB approval shall expire and reapplication shall be required.

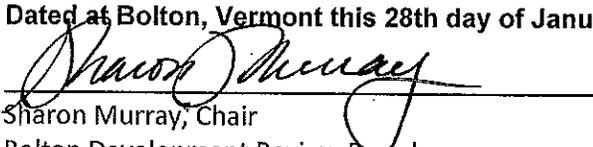
3. A revised site plan shall be filed with the Zoning Administrator prior to the issuance of a zoning permit which shows the location and dimensions of the proposed front addition as approved by the Development Review Board.
4. All other required state and municipal permits and approvals must be obtained prior to the start of construction.
5. Outdoor lighting permanently installed on the front of the dwelling, including the addition as approved, shall meet Section 3.9 of the regulations, including the requirement that outdoor lighting shall be cast downward or be designed to minimize glare (e.g., through the use of recessed, shielded, cutoff or shaded fixtures) and shall not direct light upward or outward onto adjoining properties or the road right-of-way.
6. A certificate of occupancy must be obtained from the Zoning Administrator following construction but prior to use of the front addition to ensure that it has been constructed as approved by the Development Review Board, as required under Section 9.4 of the BLUDR.
7. These conditions of approval shall run with the land and are binding upon and enforceable against permittees and their successors. By acceptance of this permit, the permittees agree to allow authorized representatives of the Town of Bolton to access the property subject to this approval, at reasonable times, for purposes of ascertaining compliance with the conditions of approval.

Approved with conditions (3-0-2) by the Bolton Development Review Board:

Jenifer Andrews – Yea
Charmaine Godin – Abstained
Sharon Murray – Yea

Margot Pender – Yea
Michael Rainville – Abstained

Dated at Bolton, Vermont this 28th day of January, 2014.



Sharon Murray, Chair
Bolton Development Review Board

NOTICES:

1. In accordance with 24 V.S.A. §4449(e), the applicants are hereby notified that state permits also may be required prior to land subdivision or construction. The applicants should contact the DEC Permit Specialist for District #4 (802-879-5676) to determine whether state permits are required.
2. This decision may be appealed to the Environmental Division of Superior Court by an interested person who participated in the proceeding before the Development Review Board. The appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Review Process

(Application materials, hearing notices, minutes on file at the Bolton Town Office.)

An initial application for conditional use approval to waive setback requirements as necessary to replace front and back open decks on an existing mobile home with enlarged, enclosed porches was filed by Kenneth Barkyoumb Jr. and Sally Carpenter on 8/26/2013. The application was accepted as complete by Bolton Zoning Administrator Miron Malboeuf and referred to the Bolton Development Review Board (DRB) for hearing on 10/31/2013. A public hearing of the DRB was scheduled for 11/19/2013 and warned by the Zoning Administrator in accordance with Section 9.8(D)(1) of the Bolton Land Use & Development Regulations (BLUDR) and 24 V.S.A. § 4464.

The public hearing to consider the application was convened on 11/19/2013, 6:30pm at the Bolton Town Office with a quorum of the DRB present. No ex parte communications or conflicts of interest were reported. The following persons attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Kenneth Barkyoumb, Applicant 87 York Road, Jericho, VT 05465

The following materials were submitted in support of the application and entered into the hearing record:

- Signed application form dated 8/26/2013, and an attached project description.
- Copy of the Bolton Tax Map showing the location of the 0.23 acre Barkyoumb parcel (#0070087) in relation to York Road and adjoining parcels.
- A sketch plan (Sketch/Area Table Addendum) showing the locations and dimensions of existing front and rear decks, and proposed front and rear enclosed porch additions (no date).
- Copy of the recorded Warranty Deed dated 10/14/1988, as recorded in the land records of the Town of Bolton on 11/4/1988, conveying the existing lot and premises to the present owner and applicant, Kenneth Barkyoumb, Jr.
- A map, submitted by the Zoning Administrator, created using the Vermont Agency of Natural Resources' Natural Resources Atlas, dated 11/19/2013, showing the location of the existing dwelling within the mapped right-of-way of York Road.

At the hearing it was determined, based on information provided, that the rear addition met existing setback requirements and therefore did not require a setback waiver from the Development Review Board. The DRB then recessed the hearing until 12/17/2013 pending additional information from the applicant and town highway foreman regarding the location of the proposed front addition within the right-of-way of York Road. The following was submitted at the hearing reconvened on 12/17/2013, 6:30 pm at the Bolton Town Office:

- Letter from Eric Andrews, Bolton Town Highway Foreman, dated 11/21/2013 regarding the proposed encroachment of the front addition into the York Road right-of-way.

The DRB adjourned the hearing that evening, following the submission of testimony and evidence, marking the start of the 45-day period for the issuance of written findings and a decision.

Findings and Conclusions

The applicants' request for conditional use approval was reviewed by the Bolton DRB for conformance with applicable standards of the Bolton Land Use and Development Regulations (BLUDR) in effect as of January 5, 2005, and amended through August 9, 2010, including the following:

- Rural I Zoning District (Table 2.4)
- Nonconforming Structures (Section 3.8(B))
- Conditional Use Review (Section 5.4)

DRB findings and conclusions under each of these are presented as follows.

Zoning District Standards (Table 2.4)

Conclusion: Based on the following findings, the DRB has determined that the existing dwelling and proposed addition, to include the replacement of a 4'x8' front deck with a larger 6'x12' enclosed porch and entrance, does not meet the minimum front setback distance from the road right-of-way, as required in the Rural I (RI) District.

1. The existing lot and dwelling are located on York Road, a Class 3 town highway, in the Rural I (RI) District, as shown on the Bolton Zoning Map and Bolton Tax Map.
2. The minimum lot area for the RI District is 2 acres. The minimum front setback distance in the RI District, as measured horizontally from the edge of the road right-of-way to the nearest point on the structure, is 35 feet.
3. The York Road, as a Class 3 town highway, has a 50-foot right-of-way. According to the Zoning Administrator, the exact location of the road right-of-way has not been surveyed; however as indicated on and measured from available maps, and as estimated by measuring from the center of the traveled portion of the road; the front of the existing dwelling and front deck are located within the York Road right-of-way.
4. The current deck and its proposed replacement do not, therefore, meet the required front setback distance of 35 feet from the edge of the road right-of-way.

Nonconforming Structures (Section 3.8(B)).

Conclusion: Based on the following findings, the DRB has determined that the mobile home is a pre-existing, nonconforming dwelling that was legally in existence as of the effective date of the current regulations. As such, the degree of noncompliance represented by the existing front deck can be increased by up to 50%, from 4' x 8' (32 sq. ft.) to no more than 6'x8' (48 sq. ft.) under this section of the regulations, subject to conditional use review and approval by the DRB under Section 5.4.

5. Under Section 3.8 (B) of the current regulations, in the event that no reasonable alternative exists, the Development Review Board may allow a nonconforming structure to be structurally enlarged, expanded, extended, modified or located in a manner that increases the degree of noncompliance up to 50% as a conditional use subject to conditional use review under Section 5.4.
6. Degree of noncompliance is defined as any enlargement or structural alteration which extends the footprint, height or volume of a structure within a required setback distance.

7. The existing dwelling, as conveyed to the applicant in 1988 by proof of warranty deed, predates the Bolton Land Use and Development Regulations enacted in 2005; and therefore meets the definition of a pre-existing nonconforming structure under Section 3.8 of the regulations.
8. The addition, as proposed, will increase the degree of noncompliance (footprint area of the existing front deck within the right-of-way) from 4'x8' (32 sq. ft.) to 6'x12' (72 sq.ft.) or 125%, to include an additional two-foot encroachment within the mapped road right-of-way. This exceeds the 50% increase allowed under this provision of the regulations.
9. The applicant has testified that an enclosed front porch area of 6' x 8' (48 sq.ft.) would be sufficient to meet his needs for an enclosed front entryway. This would increase the degree of noncompliance by only 50%, as allowed under this section of the regulations.
10. Given the location of and orientation of the mobile home as shown on the site plan and accompanying maps, no other reasonable alternative location exists for the installation of an enclosed front entryway.

Conditional Use Review (Section 5.4)

Conclusions. Based on the following findings, the DRB concludes that the proposed front addition, if reduced in footprint to 6'x8' (48 sq. ft.), and extended in width no more than 2 additional feet within the road right-of-way, will have no undue adverse effect on the capacity of existing and planned community services and facilities, the character of the area affected, traffic on the York Road, bylaws currently in effect, or the use of renewable energy resources. Because the proposed extension is within the road right-of-way, any outdoor lighting mounted on the front of the dwelling, including the addition as approved, structure must meet the requirements of Section 3.9 (Outdoor Lighting) to minimize glare and ensure that light is not directed upward, onto adjacent properties or the road right-of-way.

11. **Community Facilities and Services.** The proposed addition of an enclosed front porch to a residential structure will not affect any existing or planned municipal services or facilities. The lot is served by onsite water and wastewater systems. No increase in the number of bedrooms or facilities that would affect the capacity of existing systems is proposed.
12. **Character of the Area.** York Road is a lightly traveled town road that serves a limited amount of existing rural residential development and businesses, including an existing wood processing operation located on the lot in question. The proposed addition of an enclosed front porch will not affect the rural character of the area, as defined for the Rural I District under Table 2.4 (A), to include moderate densities of residential development.
13. **Traffic and Highways.** The proposed addition, by extending an additional two feet into the York Road right-of-way could adversely interfere with traffic on the York Road and the town's ability to maintain it. The Bolton Road Foreman however, in his letter of 11/21/2013, stated that, "The further encroachment into the York Road right-of-way by the addition 2 ft. to the front porch... will not impact the ability of the Town Highway Department to maintain York Road, nor impact the flow of traffic." It will therefore not have an undue adverse effect on the town road or local traffic in the vicinity.
14. **Bylaws.** No other municipal bylaws or ordinances apply to this project. No change to the existing access onto York Road has been proposed.

15. **Renewable Energy Resources.** The intent of the addition is to improve the energy efficiency of the existing dwelling and, in association with the rear addition, to provide needed storage space for cordwood for use in heating. The proposed project is therefore intended to support the use of wood heating.

16. **Outdoor Lighting.** Site plan review standards regarding outdoor lighting are applicable to this project. Because the existing dwelling and proposed addition are located partially within the town highway right-of-way, associated outdoor lighting mounted on the front of the dwelling or addition could result in glare that adversely affects traffic and use of the road right-of-way. As specified under Section 3.9 (Outdoor Lighting), outdoor lighting fixtures shall be cast downward or be designed to minimize glare and shall not direct light upward, onto adjacent properties or within the road right-of-way.