



Town of Bolton Development Review Board

Bolton Town Office
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Mr. Curt Hunter
Conditional Use/Enlargement of Nonconforming Structure
Application #2015-07-CU
December 1, 2015

Applicant

Mr. Curt Hunter
428 Bolton Valley Access Road
Bolton, VT 05465

Property: 428 Bolton Valley Access Road, Bolton, VT

Application

(Application materials on file at the Bolton Town Office)

The applicant has requested a reduction in the required riparian setback distance of 100 feet, as measured from the top of the bank of Joiner Brook, to construct a ramp and rear entrance deck (\pm 279 ft²) to an existing, nonconforming single family dwelling, that will provide wheelchair accessibility from the parking area to the dwelling. The dwelling is located at 428 Bolton Valley Access Road in the Rural II District (Parcel ID# 15-3000428 & 04-015-001). The proposed deck will increase the building footprint, and degree of noncompliance, within the required riparian setback area.

The application has been reviewed by the Bolton Development Review Board (DRB) as a conditional use under Section 3.8 (B)(4) pertaining to the enlargement of a nonconforming structure under the Bolton Land Use and Development Regulations (BLUDRs) as amended, effective August 9, 2010, and applicable zoning district criteria (Table 2.5), surface water setback and riparian buffer criteria (Section 3.17), and conditional use review standards (Section 5.4). The Development Review Board's procedural history and relevant findings are attached.

Decision –Conditional Use Approval

- Denied**
- Approved**
- Approved with Conditions:**

The Development Review Board hereby approves a reduction in the required setback distance from Joiner Brook, from 100 to 51 feet, to construct a wheel-chair accessible rear entrance deck to the existing nonconforming dwelling, located at 428 Bolton Valley Access Road, as indicated on the sketch plan submitted with the application dated 8/10/15, subject to the following conditions of approval:

1. The ramp and deck shall be set back a minimum of 51 feet from Joiner Brook, as measured horizontally from the top of the bank of Joiner Brook to the nearest point of the deck. No additional reduction in the required setback distance or any encroachment with the required 50-foot riparian buffer area along Joiner Brook is permitted

2. The ramp and rear entrance deck shall be constructed as represented in the application on 8/10/15, to provide wheelchair accessibility from the parking area to the dwelling entrance. Per accessibility guidelines, the deck or landing area at the rear entrance should be no more than ½ inch below the entryway. The ramp should have a minimum cleared width of 36 inches, and not exceed a grade of 1:12.
3. The deck shall be constructed over a pervious ground surface (e.g., a gravel base) and constructed with a minimum spacing between deck boards of ¼ inch to allow for the passage and infiltration of stormwater. The deck shall remain uncovered.
4. The effects of deck construction within the required stream setback area shall be mitigated by revegetating riparian buffer areas as represented during the hearing, in accordance with a restoration plan being prepared for the applicant by the Winooski Natural Resources Conservation District. Only native, noninvasive species shall be used in riparian buffer restoration.
5. A site plan drawn to scale shall be filed with the Zoning Administrator prior to the issuance of a zoning permit which shows the location and dimensions of the deck and riparian buffer restoration areas in relation to the top of the bank of Joiner Brook, as approved by the Development Review Board.
6. The applicant 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.
7. A certificate of occupancy must be obtained from the Zoning Administrator following the construction but prior to occupancy and use to ensure that it has been constructed as approved by the Development Review Board, as required under Section 9.4 of the BLUDR.
8. These conditions of approval shall run with the land and are binding upon and enforceable against the permittee and his successors. By acceptance of this permit, the permittee agrees 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 (4-0) by the Bolton Development Review Board:

Michael Rainville – Yea
Stephen Diglio – Yea
Charmaine Godin – Yea
Sharon Murray – Yea

Dated at Bolton, Vermont this 1st day of December, 2015.

For the Development Review Board:



Michael Rainville, Chair

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 & Conclusions

The applicant's request for a setback reduction was reviewed by the Bolton Development Review Board (DRB) for conformance with applicable requirements 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 II District (Table 2.5)
- Section 3.8 Nonconforming Uses and Structures
- Section 3.17 Surface Waters & Wetlands
- Section 5.4 Conditional Use Review

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

Zoning District Standards (Table 2.5 Rural II District) & Surface Waters & Wetlands (Section 3.17)

Conclusion: Based on the following findings, the DRB has determined that the existing residential dwelling, barn and proposed rear deck are nonconforming structures that do not meet current stream setback requirements as referenced under Table 2.5 and required in Section 3.17, and are therefore subject to the nonconforming structure standards under Section 3.8 of the regulations.

1. The existing dwelling is located at 428 Bolton Valley Access Road, a publicly maintained town highway, in the Rural II District, as shown on the Bolton Zoning Map and Bolton Tax Map.
2. The existing dwelling and barn conform to minimum district lot size and setback requirements, as measured from property lines and the road right-of-way.
3. For the purposes of preventing surface runoff and soil erosion, protecting water quality, and riparian wildlife habitat, as referenced under Table 2.5, the BLUDR's require under Section 3.17 that all structures and impervious surfaces shall be set back at minimum 100 feet from Joiner Brook, and that a 50-foot undisturbed, vegetated riparian buffer be established or maintained along the brook, as measured horizontally from the top of the streambank.
4. The existing dwelling and barn are located entirely within required 100-foot riparian setback from Joiner Brook as generally indicated on aerial imagery generated by the ANR Natural Resource Atlas, but outside of the required 50-foot riparian buffer area, and are therefore nonconforming structures.
5. The rear entrance deck and ramp, as proposed, will extend farther into the required riparian setback area and will therefore increase the existing degree of noncompliance; but according to the applicant, will be constructed outside of the required 50-foot riparian buffer area.

Nonconforming Uses and Structures (Section 3.8)

Conclusion: Based on the following findings, the DRB has determined that 1) the dwelling and barn, constructed prior to 1989, predate the 100-foot setback requirement from Joiner Brook as enacted in 1989, and therefore represent a legally established, nonconforming structure; 2) given the configuration

of the lot and existing dwelling, there is no other reasonable location for the proposed deck and ramp, as needed to provide wheelchair access from the parking area to the dwelling; 3) the rear deck as presented during the hearing will increase the existing degree of noncompliance within the setback area by 28% –less than the 50% increase afforded by the regulations for the expansion of nonconforming structures; and 4) that mitigation proposed by the applicant, to include a pervious deck design and the reestablishment of a vegetated buffer along Joiner Brook, will more than offset adverse effects of deck construction within the stream setback area.

6. Under Section 3.8(B) of the 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. 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 entire dwelling, attached barn and existing deck, with a footprint of ±990 square feet as indicated on the sketch plan and maps, are located entirely within the required 100-foot setback area from Joiner Brook as measured horizontally from the top of the streambank.
8. The existing dwelling and barn, constructed prior to 1989, predate the regulatory 100-foot setback requirement from Joiner Brook first enacted in 1989, and therefore represent a legally established, nonconforming structure.
9. The proposed deck and ramp, as indicated on the sketch plan, are required to provide wheelchair access from the parking area to the rear entrance of the dwelling. Due to the configuration of the lot and existing dwelling on the lot, no other reasonable alternative exists to establish an accessible pathway and entrance from the parking area to the dwelling.
10. The rear entrance deck and ramp would increase the existing building footprint within the required setback area by ±279 square feet, thereby increasing the degree of noncompliance by 28%.
11. According to the applicant, the rear entrance deck will be uncovered and designed to be pervious to rainwater. As such it will not increase existing impervious surface or lot coverage within the 100-foot riparian setback area.
12. The Applicant also testified, as proposed mitigation for construction within the setback area, that the Winooski Natural Resources Conservation District (WNRCD) is in the process of completing a riparian restoration plan for the property, to re-establish a vegetated buffer along portions of Joiner Brook.

Conditional Use Review (Section 5.4)

Conclusion: Based on the following findings, the Board concludes that the proposed rear entrance deck, as indicated on the provided application materials and discussed during the hearing, if constructed as approved, 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 Bolton Valley Access Road, bylaws currently in effect, or the use of renewable energy resources.

13. **Community Facilities and Services.** The lot is served by a Class 2 town highway, an onsite wastewater system, a private water source, and local emergency services. The proposed deck will result in no additional demand for onsite or community facilities and services.
14. **Character of the Area.** This area of the Bolton Valley Access Road includes other existing residential dwellings. The proposed addition will result in no change to the existing, rural character of the area, as defined for the Rural II District under Table 2.5, to allow for limited, compatible, lower densities of development that maintain Bolton's rural character.
15. **Traffic and Highways.** No change to the existing highway access has been proposed, and the proposed addition will not result in any increase in traffic on the Bolton Valley Access Road.
16. **Bylaws.** No other municipal bylaws or ordinances apply to this project.
17. **Energy Efficiency, Renewable Energy Resources.** No change to the height or footprint of the existing dwelling and barn have been proposed that would require energy efficiency improvements under Residential Building Energy Standards, or that would interfere with the access to, direct use or future availability of renewable energy resources on-site or on adjacent parcels.