



Town of Bolton Development Review Board

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

Mr. & Ms. Michael McKeown
Conditional Use/Enlargement of Nonconforming Structure
Application #2016-07-CU/ZP
May 18, 2016

Applicant

Mr. & Ms. Michael McKeown
191 Black Fly Hill
Jericho, VT 05465

Property: 191 Black Fly Hill, Bolton, VT

Application

(Application materials on file at the Bolton Town Office)

The Applicant has requested a reduction in the required side setback distance of 35 feet to construct an 8' x 30' (240 ft²) open front porch attached to the existing nonconforming dwelling. The structure is located at 191 Black Fly Hill in the Rural I District (Parcel ID# 1-4030191). The proposed porch will expand the existing footprint, thereby increasing the building's degree of noncompliance within the required side 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, applicable zoning district criteria (Table 2.4), 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 side setback distance from 35 to 31.5 feet, to construct an 8' x 30' open porch attached to the existing nonconforming dwelling located at 191 Black Fly Hill, as indicated on the provided site plan submitted with the application dated 3/30/2016, subject to the following conditions of approval:

1. The proposed porch shall be set back a minimum of 31.5 feet from the side property line, as measured horizontally from the property line to the nearest point of the porch. No additional reduction in the required setback distance or any encroachment within the required 35-foot side setback is permitted.
2. The proposed porch shall be constructed as represented in the zoning permit application dated 3/30/2016, as filed by the Applicant and property owner.

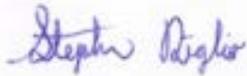
3. The Applicant must obtain a zoning permit from the Zoning Administrator prior to beginning site work and construction. In the event that a zoning permit has not been obtained within one year of the date of this decision, DRB approval shall expire and reapplication shall be required.
4. A certificate 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.
5. 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 purpose of ascertaining compliance with the conditions of approval.

Approved with conditions (4-0) by the Bolton Development Review Board:

Stephen Diglio – Yea
Sharon Murray – Yea
Charmaine Godin – Yea
Rob Ricketson - Yea
Adam Miller – absent
Michael Rainville –absent

Dated at Bolton, Vermont this 18th day of May, 2016.

For the Development Review Board:



Stephen Diglio, Chair

NOTICES:

1. In accordance with 24 V.S.A. § 4449(e), applicants are hereby notified that state permits also may be required prior to land subdivision or construction. The applicant should contact the DEC Permit Specialist for District #4 (802-879-5676) to determine whether state permits are required.
2. The applicant or another interested person may request reconsideration of this decision by the Development Review Board, including associated findings and conditions, within 30 days of the date of this decision by filing a notice of appeal that specifies the basis for the request with the Secretary of the Development Board. Pursuant to 24 V.S.A. § 4470, the board may reject the request within 10 days of the date of filing if it determines that the issues raised on appeal have already been decided or involve substantially or materially the same facts by or on behalf of the appellant.
3. This decision may also be appealed to the Environmental Division of the Vermont Superior Court by the applicant or another interested person who participated in the proceeding before the Development Review Board. Such 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 Division Court Proceedings.
4. In accordance with 24 V.S.A. § 4455, on petition by the municipality and after notice and opportunity for hearing, the Environmental Division may revoke this permit based on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.

Review Process

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

An application to enlarge an existing nonconforming structure was filed by Applicant Michael McKeown on March 30, 2016. The application was accepted as administratively complete by Bolton Zoning Administrator Sarah McShane and referred to the Bolton Development Review Board for a public hearing. A public hearing of the DRB was scheduled for April 28, 2016 and warned in accordance with Section 9.8(D)(1) of the regulations and 24 V.S.A. § 4464.

The public hearing to consider the application was convened on April 28, 2016, 6:30 PM at the Bolton Town Office with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. The following persons attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Michael McKeown, Applicant 191 Black Fly Hill, Jericho, VT 05465

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

1. Application to the Development Review Board & Building/Zoning Permit Application (2016-07-ZP/CU) dated 3-30-2016 by applicant/landowner;
2. Proposed Plan View, hand drawn sketch indicating the proposed porch, no date;
3. Proposed End View, hand drawn sketch indicating the proposed porch, no date;
4. ANR Natural Resource Atlas indicating location and existing improvements, 3-15-16;
5. Site Plan with existing house and proposed front porch in relation to the side property line, no date;
6. Listers' Card indicating the existing and proposed improvements in relation to the side property line, no date;
7. Copy of portions of Survey Plat showing existing improvements, no date;

8. Copy of tax map indicating location of parcel, no date.

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 I District (Table 2.4)
- Section 3.8 Nonconforming Uses and Structures
- Section 5.4 Conditional Use Review

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

Zoning District Standards (Table 2.4 Rural I District)

Conclusion: Based on the following findings, the DRB has determined that the existing dwelling is a legally established, pre-existing nonconforming structure that does not meet current zoning setback requirements as referenced under Table 2.4, and is therefore subject to the nonconforming structure standards under Section 3.8 of the regulations.

1. The existing dwelling is located at 191 Black Fly Hill, accessed by a shared private driveway, in the Rural I District, as shown on the Bolton Zoning Map and Bolton Tax Map.
2. The existing dwelling, constructed on the property in 1976, predates the current zoning regulations and as such is a legally established, pre-existing nonconforming structure.
3. The minimum side setback distance in the Rural I District, as measured horizontally from the side property line to the nearest point on the structure is 35 feet. The existing dwelling does not conform to minimum district setback requirements, as referenced under Table 2.4.
4. The 8' x 30' front porch, as proposed, will increase the existing footprint into the required side setback area, therefore increasing the existing degree of noncompliance.

Nonconforming Uses and Structures (Section 3.8)

Conclusion: Based on the following findings, the DRB has determined that 1) the existing dwelling, constructed in 1976, predates the town's adoption of the zoning regulations, and therefore is a legally established, nonconforming structure; 2) given the configuration of the lot and location of the existing dwelling, there is no other reasonable location for the proposed porch; and 3) the 8' x 30' porch as presented during the hearing will increase the existing degree of noncompliance within the side setback area by $\pm 12.5\%$ – less than the 50% increase afforded by the regulations for the expansion of nonconforming structures.

5. 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.

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. Portions (± 249.5 ft²) of the existing dwelling, as indicated on the provided sketch plan, are located within the required 35-foot side setback area as measured horizontally from the nearest point of the structure to the side property line.
8. The existing dwelling, constructed in 1976, predates the town's zoning regulations enacted in 1989, and therefore represents a legally established, nonconforming structure.
9. Due to the size and configuration of the lot and location of the existing dwelling on the lot, no other reasonable alternative exists to construct the porch outside of the side setback.
10. The proposed 8' x 30' front porch will increase the existing building footprint by ± 240 ft². Approximately ± 31.36 ft² of the porch will be located within the required side setback area; thereby increasing the degree of noncompliance by approximately $\pm 12.5\%$.

Conditional Use Review (Section 5.4)

Conclusion: Based on the following findings, the Board concludes that the proposed 8' x 30' porch, 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 Stage Road, bylaws currently in effect, or the use of renewable energy resources.

11. **Community Facilities and Services.** The lot is served by a privately maintained shared driveway, an onsite wastewater system, a private water source, and local emergency services. The proposed 8' x 30' porch will result in no additional demand for onsite or community facilities and services.
12. **Character of the Area.** This area of the Stage Road and West Bolton includes other existing residential dwellings and associated outbuildings. The proposed attached 8' x 30 porch will result in no change to the existing, rural character of the area, as defined for the Rural I District under Table 2.4, to allow for modest densities of residential development in appropriate locations in a manner that maintains Bolton's rural character.
13. **Traffic and Highways.** The proposed 8' x 30' porch will not result in any increase in traffic on the Stage Road or in the nearby vicinity, or any encroachment within the town highway right-of-way. No change to the existing access has been proposed.
14. **Bylaws.** No other municipal bylaws or ordinances apply to this project.
15. **Energy Efficiency, Renewable Energy Resources.** No changes to the existing dwelling have been proposed that would require energy efficiency improvements under Residential Building Energy

Standards (RBES), or that would interfere with the access to, direct use or future availability of renewable energy resources on-site or on adjacent parcels.