



Town of Bolton  
3045 Theodore Roosevelt Highway  
Bolton, VT 05676

**Bolton Development Review Board**  
**Meeting Minutes**  
**May 27, 2014**  
**Bolton Town Office**

DRB Members Present: Jenifer Andrews, Charmaine Godin, Sharon Murray, Margot Pender, Michael Rainville (Chair), John Devine (Alternate), Stephen Diglio (Alternate)

DRB Members Absent: Michael Hauser (Alternate)

Staff Present: Miron Malboeuf, Zoning Administrator

Staff Absent: David Punia, DRB Clerk

Others Present: Amanda Bolton (Applicant); Susan Carpenter (Applicant).

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**Posted Agenda:**

1. Public Comment
  2. Public Hearings: Application 2014-05-C | Kenyon and Susan Bolton; setback waiver for addition/deck  
Application 2013-21-CU-RE | Kenneth Barkyoumb, Sally Carpenter; request for reconsideration
  3. Application 2014-01-SD | Miriam Thomas, Green Mountain Club; 2-lot subdivision – review of deed language
  4. ZA Report
  5. Meeting Minutes
  6. Other Business
  7. Meeting Adjournment
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**Call to Order**

Mr. Rainville, Chair, called the meeting to order at 6:30 p.m. with the full board present. There were no requested changes to the posted agenda. DRB alternates, John Devine and Stephen Diglio participated in the meeting.

**1. Public Comment**

No public comments were received.

**2. Public Hearings:**

Mr. Rainville, Chair, noted that participation in the DRB hearing process was required in order to appeal the decision of the DRB.

**Kenyon and Susan Bolton – Conditional Use Review, Setback Waiver (2014-05-CU)**

Mr. Rainville called the hearing to order at 6:40, referencing the hearing notice. He then recused himself, citing his business relationship with the applicant in relation to this project, and turned over the conduct of the hearing to Ms. Andrews, Vice Chair. Mr. Rainville left the table to join the applicant, and did not participate in the proceedings. No other reported conflicts of interest, ex parte communications were reported.

Amanda Bolton, applicant, presented their request to replace a recently removed deck on the rear of their existing single family dwelling, located at 1873 Notch Road in the Rural II District, with a new 180

square foot addition and a 245± square foot deck off the addition, totaling 425 square feet, as shown in the application. The dwelling is a pre-existing, nonconforming single family dwelling that was constructed in 1973. Portions of the existing dwelling, former deck and proposed additions are located within the minimum 50-foot side setback on the north side of the house, as specified for the Rural II District. The applicants requested that the DRB grant a waiver to allow for the construction of the proposed addition, and to add a new deck to the rear and side of the addition, as shown in the application.

The following application materials, forwarded to the DRB in advance of the hearing, were entered into the hearing record:

- Application form for conditional use review, dated April 7, 2014, as referred by the Zoning Administrator to the DRB on May 12, 2014.
- Copy of the hearing notice as posted and published.
- Exhibit 1: Application cover letter and project description, dated April 7, 2014.
- Exhibit 2: Bolton Tax Map (Sheet 5) showing the location of the property in relation to adjoining properties and the Notch Road.
- Exhibit 3: Sketch plan, prepared by the applicants, showing the location of the existing house, area of the proposed addition, septic system and leach field and garage on the lot, and associated setback distances from property lines.
- Exhibit 4: Calculations for determining the degree of noncompliance under the regulations.
- Exhibit 5.1: Detailed sketch plan of the proposed addition and deck in relation to existing structures and property lines, and associated calculations.
- Exhibit 5.2: Elevation sketch of the proposed addition and deck.

Ms. Murray indicated that, under Section 3.8 of the regulations as noted in the application, the DRB could only grant a waiver that did not increase the degree of noncompliance – defined based on the existing degree of noncompliance (footprint area within the required setback) – by more than 50%. She then asked for clarification regarding the square footage of the deck that had recently been removed. According to the applicant the existing deck was approximately 250 square feet; 140 square feet of which was within the setback area.

Mr. Malboeuf noted that the calculations supplied with the application (Exhibits 4, 5.1) were based on the total footprint of the existing dwelling, rather than the portion within the setback area, and provided the following corrected calculations for the existing footprint within the setback area (excluding the former deck):

Existing house: 20 feet x 30 feet =	600 square feet
Mud room (front of house):	<u>25 square feet</u>
Total:	625 square feet

A 50% increase in the degree of noncompliance would equal 312.5 square feet, or 382.5 feet if the noncompliant portion of the former deck was also included. The proposed addition and deck would add only 140 square feet to the existing structure within the setback area (the same area as the former deck), increasing the current degree of noncompliance by 22.4%.

This was followed by discussion among DRB members whether the 50% minimum was to be based only on the nonconforming square footage of the deck being replaced (as considered previously, for other

deck applications), or whether it should include the total structural footprint within the setback area, given that the request was for an addition to the existing structure. Mr. Diglio asked whether entry stairs would also be included, noting that these are exempt from setback requirements in other communities. Ms. Murray noted that entry stairs are also exempt from setback requirements under Bolton's regulations. She suggested that the DRB's interpretation and application of this section regarding the degree of noncompliance should be adopted in writing, to be consistently applied under future applications, until such time as the Planning Commission updated the regulations to offer clarification, as previously requested by the DRB.

It was generally agreed that, because the addition/deck was to be constructed within the footprint of the previous deck, it in effect would not increase the degree of noncompliance (footprint within the setback area) if only this was considered. It was also noted by the DRB, based on a review of application materials that:

- The addition and deck could not be located on the other (south) side of the house due to the septic system and leach field.
- The new deck would be located to the west and south of the addition, limiting the distance it extended into the 50-foot side setback to 14 feet.
- An existing shed is located between the proposed addition/deck and the north property line, 16 feet from the property line. The addition/deck will not encroach any farther within the setback area than the existing shed.

Ms. Murray asked whether the neighbors to the north had expressed any concerns. Ms. Bolton noted that they had spoken with them in advance of the hearing, and they had no concerns. Mr. Malboeuf noted that all adjoining owners had been sent the hearing notice, and the town had received nothing from in advance of the hearing.

The DRB then reviewed the application under applicable conditional use criteria under Section 5.4 of the regulations. No specific concerns were noted. Ms. Murray asked whether the addition or deck would include the installation of outdoor lighting. Ms. Bolton indicated that there may be one lighting fixture mounted to the rear of the addition. Ms. Murray noted that under the regulation's outdoor lighting standards, an exterior should be directed downward, so that it does not shine onto the adjoining property.

Ms. Murray made the motion to adjourn the hearing, seconded by Ms. Pender. The motion passed unanimously. A written decision will be issued within 45 days. Ms. Bolton asked that it be issued as soon as possible. Ms. Bolton left the meeting.

**Kenneth Barkyoub and Sally Carpenter – Request for Reconsideration, Condition of Approval (2013-21-CU-RE)**

Mr. Rainville, Chair, rejoined the meeting and convened the hearing on the Barkyoub, Carpenter request for reconsideration, referencing the hearing notice as warned. Ms. Murray asked whether Ms. Carpenter preferred that she recuse herself, given the concern expressed by the applicants that she was now also a member of the Select Board. Ms. Murray reported that she had recused herself from the Select Board's discussion of their request for reconsideration, given her participation on the DRB in issuing the initial decision. Ms. Carpenter did not ask Ms. Murray to recuse herself. No other conflicts of interest or ex parte communications were reported.

The following materials submitted to the DRB in advance of the hearing were entered into the hearing record:

- Application form for conditional use review (reconsideration) dated May 9, 2014, as referred to the Development Review Board on May 13, 2014.
- Copy of the decision issued by the DRB regarding the initial application (2013-21-CU) on January 28, 2014.

Ms. Murray noted that, technically, as an appeal of the DRB's conditions of approval, a notice of appeal should have been filed that outlined the reasons for the request – e.g., whether the DRB had acted in error under the regulations.

Ms. Carpenter noted that they had initially requested a waiver to replace a 4' x 8' (32 SF) open deck on the front of their mobile home, outside of the front setback area, with an enclosed front porch and entryway of 6' x 12' (72 SF) to use as a mudroom and to minimize heat loss. The DRB instead had granted only a 6' x 8' (48 SF) enclosed entryway which, given the extended roof line, didn't provide sufficient height at the entrance for a door opening. She asked that they be granted their initial request.

Ms. Murray noted that, as specified in findings, the area had been reduced to limit the increase in the degree of noncompliance (footprint area) to 50% as required under the regulations. She asked Ms. Carpenter whether the DRB had acted in error. Ms. Carpenter noted that written finding (#9) indicating that the applicants had agreed to the smaller square footage was incorrect – that under the circumstances they would not have agreed to this.

It was observed that, if the DRB included the entire portion of the structure in its calculations, and not just the square footage of the deck, a larger deck might be allowed, given that the front of the mobile home was also noncompliant. Mr. Rainville noted, however, that the front of the dwelling, including the attached deck, was outside of the required setback area, within the right-of-way of York Road – in effect on town property. Ms. Godin suggested that the DRB, if it acted in error, did so by allowing any additional encroachment within the road right-of-way, outside of the setback area. Neither Mr. Rainville nor Ms. Godin had participated in the initial decision.

Ms. Carpenter reiterated that Eric Andrews, the town's road foreman, had signed off on the encroachment within the road right-of-way. Ms. Murray reported that, given this, the other members of the DRB had agreed to approve an increase in the area of the deck by the 50%, as allowed under the waiver provision, to try to accommodate the applicants – but agreed that the regulations weren't clear about structures outside of the setback area, within the road right-of-way. She also noted that no information had been provided regarding the footprint of the structure within the front setback and road right-of-way – just the deck. It was clear only that the existing deck was legally nonconforming, that it was within the right-of-way based on information provided, and therefore did not meet the front setback requirement. Under the regulations, any additional increase, beyond 50%, would have required variance approval – including consideration under related hardship criteria.

Ms. Carpenter indicated that the lot is small, and is physically constrained by the road right-of-way and a steep drop off – the mobile home could not be moved back on the lot. This was confirmed by Ms. Andrews. Ms. Carpenter also noted that they had to replace their former heating system – a wood

furnace in the garage – following a fire, and were now forced the heat with fuel oil which financially was a hardship. Their intent was to better enclose and heat the home with a woodstove.

Mr. Rainville asked if there were any other questions. There being none, Ms. Murray moved to adjourn the hearing, seconded by Ms. Andrews. The motion passed unanimously. Ms. Carpenter left the meeting.

**3. Application 2014-01-SD | Miriam Thomas, Green Mountain Club; 2-lot subdivision – deed language.**

Mr. Malboeuf noted that the applicants had provided requested deed language in association with a final subdivision plat that had been submitted for recording in the town land records.

Ms. Murray noted that the plat could not be recorded until a decision had been issued by the DRB, and the plat could be reviewed against the conditions of approval. Ms. Murray then made the motion to enter into deliberative session to discuss applications before the board, including a review of the draft Thomas/Green Mountain Club decision (2014-01-SD). This was seconded by Ms. Pender and approved unanimously.

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**Deliberative Session [7:35 -8:00 pm]**

The deliberative session was adjourned around 8:00 pm. Ms. Murray made the motion to reconvene the public meeting of the board, seconded by Ms. Pender. Based on its deliberations, the DRB voted unanimously (5-0) to, as of this date, adhere to the following interpretation of the regulations with regard to nonconforming structures under Section 3.8 (4), until such time as the bylaws are amended for clarification:

1. Any increase in the “degree of noncompliance” will be calculated based on the total area (footprint) of the existing nonconforming structure or structures within the required setback area, and not just that portion to be replaced.
2. No waivers will be considered for structures or portions of structures that are located outside of the required setback area, within the road right-of-way (for zoning purposes, off the lot). Applicants will instead need to apply for a hardship variance under Section 9.6.

The DRB also voted unanimously (5-0) to approve and issue the Thomas/GMC subdivision decision with conditions, as signed by the Chair, to be sent to the applicants by certified mail. Given that the conditions of approval require changes to the plat, the Chair did not sign the plat as submitted.

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**4. Zoning Administrator Report**

**4 x4 Curb Cut.** Mr. Malboeuf reported that, while the Bolton Valley Lot #5 subdivision appeal had been postponed until August, the 4x4 School had submitted a letter requesting a “curb cut permit” from the DRB for the access in question. He distributed copies of a letter from their engineer, Dean Grover of Grover Engineering PC to the DRB dated May 9, 2010, and from their attorney Claudine Safar to town

attorneys, dated May 21, 2014. He also provided a copy of the site plan submitted with the letter from Mr. Grover. Given that amended subdivision approval was required from the DRB for this access, as stated in its decisions on the Lot #5 subdivision (under appeal), he considered their application incomplete. To date, no forms or fees for a subdivision amendment – or for conditional use or site plan review– had been submitted. He planned to check with the town attorney regarding whether a curb cut permit from the Select Board could be considered in advance of DRB approval – especially given that this is the subject of their appeal to court – and noted that to date no highway access application forms had been submitted either.

Ms. Murray noted that the access and the timing of a curb cut permit was addressed in DRB findings on reconsideration – that it was the DRB’s intent that DRB approval for the driveway or development road would be required prior to the issuance of a curb cut permit, per the regulations and state highway statutes; though highway access permits are under the separate jurisdiction of the Select Board. She also observed that the proposed shop and parking area, as shown on the site plan to be accessed by the driveway, had not been approved by the DRB and that a building envelope would also be required. Following discussion regarding an appropriate response, Ms. Murray, at the request of other DRB members, agreed to work with the Zoning Administrator and Town Attorney to make sure that previous DRB findings and decisions regarding this access were considered and upheld.

**Harrington Parcel.** Mr. Malboeuf reported that Mr. Harrington had constructed two yurts on his property and a bridge crossing without town approval, despite being notified that permits, and potentially DRB approval, would be required. Mr. Harrington has since met with him regarding application requirements.

**Bean Property/VTrans.** Ms. Murray noted that the contractor on the RT2 Highway project has been storing materials on the Bean property, within the flood hazard area, in violation of the town’s flood hazard area regulations and prior conditions of DRB approval , as documented by Mr. Malboeuf; and that the Town Clerk and Select Board had received several complaints about this from local residents. Mr. Malboeuf, and Ms. Murray on behalf of the Select Board, have both followed up with the state and the landowner, requesting written documentation that this activity is in fact exempt from local flood hazard area regulation. The Select Board at its last meeting decided that, if this documentation was not received by May 27<sup>th</sup>, it would recommend that the Zoning Administrator issue a notice of violation to the landowner, to ensure equal treatment under the regulations. Ms. Murray, in Mr. Malboeuf’s recent absence, notified staff from both Floodplain Management and VTran’s Environmental Review of the Select Board’s decision.

#### **5. Meeting Minutes:**

Ms. Andrews made the motion to approve the April 19, 2014 meeting minutes as presented; seconded by Ms. Pender. Motion carried 5-0. Past minutes were tabled, pending receipt of draft minutes from the DRB Clerk.

#### **6. Other Business**

Ms. Murray noted that the Town Clerk would be contacting Mr. Punia on behalf of the Select Board regarding his intent to continue as the DRB Clerk, given his recent absences.

Ms. Andrews noted that she would be stepping down from the DRB in the near future, pending the sale of their home.

**7. Meeting Adjournment**

Ms. Godin made the motion to adjourn the meeting at 8:40 p.m. Ms. Andrews seconded. The motion carried (5 – 0).

The next regular meeting of the DRB is scheduled for Tuesday, June 24th, 2014, 6:30 pm at the Bolton Town Office.

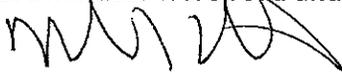
Respectfully submitted,

Sharon Murray, Acting Clerk  
Bolton Development Review Board

*\*\*These minutes are unofficial until formally accepted by the DRB.*

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These minutes were read and accepted by the Development Review Board on July 22, 2014.



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Michael Rainville, DRB Chair

