



Town of Bolton Development Review Board

Bolton Town Office
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Mr. Quinn Keating
Conditional Use/Enlargement of Nonconforming Structure
Application #2016-05-CU/ZP
March 25, 2016

Applicant

Mr. Quinn Keating
177 Mill Brook Road
Bolton, VT 05465

Property: 177 Mill Brook 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 Mill Brook, to reconstruct and enlarge an existing, nonconforming accessory structure barn ($\pm 795 \text{ ft}^2$). The structure is located at 177 Mill Brook Road in the Rural I District (Parcel ID# 1-0060177). The proposed enlarged barn will maintain the existing footprint but will add a second story, thereby increasing the building's volume 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 2.4), 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 Mill Brook, from 100 to 67 feet, to reconstruct and enlarge the existing nonconforming barn, located at 177 Mill Brook Road, as indicated on the provided site plan submitted with the application dated 1/10/2016, subject to the following conditions of approval:

1. The enlarged barn shall be set back a minimum of 67 feet from Mill Brook, as measured horizontally from the top of the bank of Mill Brook to the nearest point of the barn. No additional reduction in the required setback distance or any encroachment with the required 50-foot riparian buffer area along Mill Brook is permitted.

2. The existing barn shall be reconstructed and enlarged as represented in the zoning permit application dated 1/10/2016, as filed by the applicant and property owner.
3. 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 enlarged barn in relation to the top of the bank of Mill Brook, as approved by the Development Review Board.
4. 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.
5. The required 50-foot riparian buffer area, as measured from the top of the bank of Mill Brook, shall remain intact as a naturally vegetated buffer. No development, excavation, landfill, or grading shall occur within the buffer area, and vegetation shall be left in an undisturbed state, unless approved by the Development Review Board.
6. 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.
7. 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 (5-0) by the Bolton Development Review Board:

Michael Rainville – Yea
Stephen Diglio– Yea
John Devine – Yea
Sharon Murray – Yea
Adam Miller –Yea

Dated at Bolton, Vermont this 25th day of March, 2016.

For the Development Review Board:



Michael Rainville, Chair

- Photographs (4) of the existing barn.

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 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 2.4 Rural I District) & Surface Waters & Wetlands (Section 3.17)

Conclusion: Based on the following findings, the DRB has determined that the existing barn are nonconforming structures that do not meet current stream setback requirements as referenced under Table 2.4 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 177 Mill Brook Road, a publicly maintained town highway, in the Rural I District, as shown on the Bolton Zoning Map and Bolton Tax Map.
2. The existing lot and barn do not conform to minimum district lot size or setback requirements, as referenced under Table 2.4.
3. For the purposes of preventing surface runoff and soil erosion, protecting water quality, and riparian wildlife habitat, as referenced under Table 2.4, the BLUDR's require under Section 3.17 that all structures and impervious surfaces shall be set back at minimum 100 feet from Mill 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 barn is located entirely within required 100-foot riparian setback from Mill Brook as generally indicated on aerial imagery generated by Google Earth, but outside of the required 50-foot riparian buffer area, and is therefore considered a nonconforming structure.
5. The reconstructed and enlarged barn, as proposed, will not increase the existing footprint or extend farther into the required riparian setback area; however will increase the total building volume therefore increasing the existing degree of noncompliance. According to the applicant, the project will not disturb 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 barn, constructed prior to 1978, predate the 100-foot setback requirement from Mill Brook as enacted in 1989, and therefore represent 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 enlarged barn; 3) the enlarged barn as presented during the hearing will increase the existing degree of noncompliance within the setback area by 27% –less than the 50% increase afforded by the regulations for the expansion of nonconforming structures; and 4) that the required 50-foot riparian buffer along Mill Brook will not be impacted and will be left undisturbed as a naturally vegetated buffer.

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 existing barn, with a footprint of ± 795 square feet as indicated on the sketch plan and aerial photographs, is located entirely within the required 100-foot setback area from Mill Brook as measured horizontally from the top of the streambank.
8. The existing barn, constructed prior to 1978, predate the regulatory 100-foot setback requirement from Mill Brook first enacted in 1989, and therefore represent 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 relocate the barn outside of the riparian setback.
10. The reconstructed and enlarged barn will not increase the existing building footprint of ± 795 ft² [$\pm 6,360$ cubic feet] within the required setback area; however will increase the buildings volume by $\pm 1,728$ cubic feet, thereby increasing the degree of noncompliance by approximately 27%.
11. The reconstructed and enlarged barn will not increase the existing building footprint. As such it will not increase existing impervious surface or lot coverage within the 100-foot riparian setback area.
12. The Applicant also testified that the project will not disturb or impact the required 50-foot riparian buffer along Mill Brook. The buffer will be left undisturbed as a naturally vegetated riparian buffer along Mill Brook.

Conditional Use Review (Section 5.4)

Conclusion: Based on the following findings, the Board concludes that the proposed enlarged barn, 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 Mill Brook Road, bylaws currently in effect, or the use of renewable energy resources.

13. **Community Facilities and Services.** The lot is served by a Class 3 town highway, an onsite wastewater system, a private water source, and local emergency services. The proposed enlarged barn will result in no additional demand for onsite or community facilities and services.
14. **Character of the Area.** This area of the Mill Brook Road includes other existing residential dwellings and associated outbuildings. The proposed enlarged barn 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 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 Mill Brook Road.
16. **Bylaws.** No other municipal bylaws or ordinances apply to this project.
17. **Energy Efficiency, Renewable Energy Resources.** No changes to the existing barn 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.