



Town of Bolton Development Review Board

Bolton Town Office
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Deborah Shelby
Conditional Use/Enlargement of Nonconforming Structure
Application #2015-10-ZP.CU
August 3, 2015

Applicant

Deborah Shelby
2169 Notch Road
Bolton, VT 05465

Property: 2169 Notch Road, Bolton, VT

Application

(Application materials on file at the Bolton Town Office)

The applicant has requested a reduction in the required building setback distance of 35 feet, as measured from the road right-of-way, to construct an addition to an existing, nonconforming single family dwelling located at 2169 Notch Road in the Rural II District (Parcel ID# 5 0042169). The proposed addition will increase the degree of noncompliance with regard to both building footprint and height, within the required 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) 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 of 35 feet to 30.75 feet, as measured from the Notch Road right-of-way to the nearest point of the existing, nonconforming building foundation, to construct an addition which does not extend beyond the existing foundation, as previously approved by the Zoning Administrator (Zoning Permit 2013-23-ZP; 9/12/13), subject to the following conditions of approval:

1. Since the Zoning Administrator issued a zoning permit in error for construction of the existing, non-conforming building foundation, the Board will allow for an increase in building height to accommodate an addition on the existing foundation, but not an increase in the total building footprint (square footage) within the required front setback, which would further increase the degree of noncompliance in violation of the regulations.

2. The Board therefore does not approve the residential addition as presented on the site plan and proposed building elevations provided during the public hearing, given that the addition as proposed would extend at least three feet beyond the existing nonconforming foundation and therefore further increase the degree of noncompliance by more than 50%, in violation of the regulations.
3. The Board does approve a reduction in the required front setback of 35 feet to 30.75 feet, as established by the existing, nonconforming building foundation, to allow for construction of an addition on the existing foundation. No additional setback reductions or encroachments within the required setback area are allowed.
4. A 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 residential addition as approved by the Development Review Board.
5. 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.
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. Certification that the replacement dwelling meets applicable state Residential Building Energy Standards (RBES) must be recorded in the land records of the town prior to the issuance of a certificate of occupancy.
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 – Aye
Stephen Diglio – Aye
Charmaine Godin – Aye
Sharon Murray – Aye

Dated at Bolton, Vermont this 3rd day of August, 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 3.6 Lot, Yard, & Setback Regulations
- Section 3.8 Nonconforming Uses and Structures
- Section 5.4 Conditional Use Review
- Section 5.3 Site Plan Review (as incorporated and considered under Section 5.4)

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

Zoning District Standards (Table 2.5 Rural II 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 district standards as required in Table 2.5 and is therefore subject to the nonconforming structure standards under Sections 3.7 and 3.8 of the regulations.

1. The existing dwelling is located at 2169 Notch Road on a publicly maintained town highway, in the Rural II District, as shown on the Bolton Zoning Map and Bolton Tax Map.
2. The minimum lot area for the Rural II District is 10 acres. The minimum front setback distance in the Rural II District, as measured horizontally from the edge of the road right-of-way to the nearest point on the structure is 35 feet.
3. Portions of the current dwelling are located within required front setback as shown on the 'Plat to Illustrate Building Location on Lands of Deborah Shelby' prepared by Albert W. Harris (LS #584), dated May 19, 2015.
4. The property owner received a zoning permit issued by the Zoning Administrator for a 24' x 12' extension of the building foundation only for purposes of wood storage (Zoning Permit 2013-23-ZP) on September 12, 2013.
5. The Zoning Administrator subsequently determined, in association with this application, that the foundation as approved and constructed in fact extends approximately 4.25 feet into the required front setback area, as shown on the survey plat.
6. As such, the nonconforming foundation is a legally established, nonconforming structure as defined in the Bolton Land Use and Development Regulations and 24 V.S.A. § 4412(7).

7. The proposed addition will be sited to meet the required side setbacks; however it will not meet the required front setback distance of 35 feet from the edge of the road right-of-way.

Nonconforming Uses and Structures (Section 3.8)

Conclusion: Based on the following findings, the DRB has determined that the residential addition as presented during the hearing will extend three or more feet beyond the existing, nonconforming building foundation and thereby increase the degree of noncompliance, with regard to building height and footprint, in excess of 50% allowed for in the regulations. As an alternative, the board concludes that that it is reasonable to allow for the construction of an addition on the existing, previously approved foundation, accepting an increase in building height without increasing the building footprint within the required setback area.

8. Under Section 3.8(B) of the regulations, in the event that no reasonable alternative exists, the Development Review Board may allow a non-conforming 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.
9. Degree of non-compliance is defined as any enlargement or structural alteration which extends the footprint, height, or volume of a structure within a required setback distance.
10. The residential addition as presented during the hearing would increase both the building height and footprint, and therefore total volume, within the required front setback area, thereby increasing the degree of noncompliance.
11. Based on the information presented during the hearing, the Board calculated the existing non-conforming foundation within the setback area to be approximately 40 square feet. The proposed addition, which would extend 3 feet or more beyond the existing foundation, would reduce the existing setback distance and increase the building footprint and building height within the setback area by 100%, in excess of the 50% allowed subject to waiver under the regulations.
12. Given that the existing, nonconforming foundation was permitted in error, it is also reasonable for the applicant to expect that an addition could be constructed on the foundation as previously approved by the Zoning Administrator.

Conditional Use Review (Section 5.4)

Conclusion: Based on the following findings, the Board concludes that the proposed addition, as indicated on the provided application materials and discussed during the hearing, if constructed no closer to the road right-of-way than the existing, previously approved foundation, 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 Notch 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 addition will result in no additional demand for existing community facilities and services.

14. **Character of the Area.** This area of the Notch Road includes numerous existing rural residential dwellings. The proposed addition will result in no change to the existing, rural residential 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.** The applicant testified that the Notch Road has, over the years, been widened and improved by the town along the front of the property, resulting in the need to address highway drainage issues within and outside of the existing road right-of-way. The proposed addition, if confined to the existing foundation, will not further encroach within the required setback from the road right-of-way, and therefore should not exacerbate existing drainage problems identified by the applicant. No change to the existing access has been proposed, and the proposed addition will not result in any increase in traffic on the Notch Road.
16. **Bylaws.** No other municipal bylaws or ordinances apply to this project.
17. **Energy Efficiency, Renewable Energy Resources.** The proposed addition will be required to follow current Residential Building Energy Standards (RBES). An RBES Certificate must be recorded in the Town Land Records prior to the issuance of a certificate of occupancy by the Zoning Administrator.