

Town of Bolton
Development Review
Board

2712 Theodore Roosevelt Highway
Bolton VT 05676
(802) 434-5075

In re: **Al Duffy/ Waiver Request**
July 9, 2007

Findings & Decision

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves a waiver request submitted by Al Duffy under Sections 3.8 (Nonconforming Uses & Structures) and 5.4 (Conditional Use Review) of the Town of Bolton Land Use & Development Regulations. The request is to waive, subject to conditional use review by the Bolton Development Review Board (DRB), the district rear setback requirement of 35-feet in order to replace and enlarge a damaged pre-existing, nonconforming storage shed attached to the rear of the principal structure, a single family dwelling. The dwelling and attached shed are located at 93 Curtis Lane, in the Rural I Zoning District (Tax Map Parcel ID #15-0100093).
2. The completed application and fees were received by Lawrence Peterson, Zoning Administrator, on May 30, 2007. A copy of the application is on file at the town office.
3. On Tuesday, June 4, 2007, a copy of the notice of a public hearing was mailed to the applicant. A copy of the hearing notice is on file at the town office.
4. On Tuesday, June 4, 2007, a copy of the notice of public hearing and information regarding interested person status was mailed to the all owners of properties adjoining the property subject to the application [list on file at Town Office].
5. On Tuesday, June 4, 2007, notice of a public hearing was posted at the following places:
 - a. Bolton Town Office.
 - b. Bolton Store.
 - c. Smiley School
 - d. The Duffy parcel on Curtis Lane, within view of the public-right-of-way most nearly adjacent to the property for which the application was made.
6. On Tuesday, June 5, 2007, the notice of public hearing was published in the *Burlington Free Press*. A copy of the published notice is on file at the town office.
7. The application was considered by the Development Review Board at a warned public hearing held at the Bolton Town Office on Wednesday, June 20, 2007. The Development Review Board reviewed the application under the Bolton Land Use & Development Regulations (BLU&DR), as adopted January 5, 2005 (effective January 26, 2005).
8. Present at the hearing were the following members of the Development Review Board, representing a quorum of the Board:
 - Sharon Murray, Chair
 - Margot Pender
 - Michael Rainville
 - Michael Hauser

No conflicts of interest or ex parte communications were disclosed by members of the board.

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9. At the outset of the hearing, the Chair afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. §4465(b) to demonstrate that the criteria set forth in that statute could be met. It has been determined for the record that Al Duffy, as the applicant, and the following abutters who participated in the hearing have met the criteria for interested person status and retained the right to appeal any decision of the DRB under these proceedings.

- Timothy and Amy Grover
- Linda and Michael Baker, and
- Marion Sequin and Irene Lamell

No other person requested interested person status or otherwise participated in these proceedings.

10. During the course of the hearing the following exhibits were submitted to the Development Review Board for consideration, which are on file at the Bolton Town Office:

- Application for a zoning permit, signed and dated 5/7/07
- Application for waiver/conditional use review, signed and dated 5/30/07.
- Photocopy of Bolton Tax Map #15, showing the Duffy property, adjoining parcels and rights-of-way.
- Sketch of the Duffy parcel prepared by Lawrence Peterson based on measurements provided by Al Duffy, showing the existing lot (dimensions), house (footprint, dimensions), existing and proposed sheds (footprints, dimensions, setbacks from property lines), and district setback requirements.
- Letter submitted by abutters, Linda and Michael Baker, dated June 7, 2007.
- Letter submitted by abutters, Tim and Amy Grover, dated June 18, 2007.

11. During the course of the hearing, oral testimony was presented to the Development Review Board by abutters Marion Sequin and Irene Lamell, as reported in the minutes of the meeting, on file at the Bolton Town Office.

12. The public hearing was adjourned on June 20, 2007. The Development Review Board considered this application in deliberative session, pending issuance of a written decision within 45 days of the date of hearing adjournment.

FINDINGS

Based on the application, testimony, exhibits, and other evidence submitted for review, the Development Review Board makes the following findings:

Property Description:

1. The subject property is located at 93 Curtis Lane in the Town of Bolton, Vermont (Tax Map #15, Parcel ID #0100093).
2. The applicant seeks a waiver to replace and enlarge an attached, pre-existing, nonconforming 5' x 16' open storage shed that was damaged by a winter storm, with an attached 16' x 26' open storage shed (roof supported by posts). The existing and proposed storage sheds are located behind the principal dwelling.

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3. The property is located in the Rural I (R1) District as depicted on the Town of Bolton Zoning Map on record at the Bolton Town Office, and described in Table 2.4 of the Bolton Land Use & Development Regulations.
4. The existing and proposed sheds are located within required district side and rear minimum setback distances from property lines (35'). Because the existing shed was legally in existence as of the effective date of the BLU&DR, it is a pre-existing nonconforming structure as defined under the regulations.

Waiver Criteria (Section 3.8):

5. Under Sections 3.1 and 3.8(B)(4) of the regulations, the DRB may allow for the replacement and enlargement of a damaged nonconforming structure in a manner that increases the degree of noncompliance no more than 50% as a conditional use subject to conditional use review and approval.
6. The replacement and enlargement of the existing shed will not increase the degree of noncompliance with regard to the side yard setback. It was calculated, from measurements provided, that the DRB can approve an increase in the encroachment into the rear setback area (degree of noncompliance) by no more than 50% of the existing encroachment, or 13' 4", subject to conditional use review. Note that this is 2'8" less than that shown on the application sketch.

Conditional Use Criteria (Section 5.4):

7. The DRB finds that the proposed storage shed will have no undue adverse effect on the capacity of existing or planned community services or facilities. The replacement of a storage shed located in the rear of the building will require no additional community facilities or services.
8. The DRB finds that the proposed storage shed will have no undue adverse effect on the character of the area affected. The replacement shed is an allowed accessory structure in this district. It is located behind the house and as such largely is screened from the road. There are no other structures in the vicinity on land abutting the rear of the parcel. All participating abutters indicated, through written or oral testimony, that they had no concerns about the location or size of the shed as proposed.
9. The DRB finds that the proposed storage shed will have no undue adverse effect on roads and highways in the vicinity. The storage shed is not intended for the storage of cars or other motor vehicles and has no direct access to Curtis Lane. No additional traffic will be generated.
10. The DRB finds that, except for district rear setback requirements, the proposed storage shed complies with all other municipal bylaws and ordinances currently in effect.
11. The DRB finds that the proposed storage shed will have no under adverse effect on the sustainable use of renewable energy resources, including adjoining solar access or local wood supplies.
12. The DRB finds that, due to the type and scale of this project – the replacement and expansion of a small, open storage shed – site plan review standards are not applicable.
13. The DRB finds that the proposed shed conforms to applicable policies and recommendations of the Bolton Town Plan for this district as most recently adopted (June 4, 2007, p.11).

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14. The DRB finds that the proposed shed, except for district side and rear setback requirements, meets all other zoning district and use standards.
15. The DRB finds that minimum performance standards under Section 3.12 may apply, depending upon the type of materials stored. The applicant has indicated that the storage shed will be used to store household goods and recreational equipment. No hazardous materials will be stored on-site.

DECISION & CONDITIONS

Based upon these findings, the Development Review Board **APPROVES** (4-0) the request by Al Duffy for a waiver to replace and expand a damaged pre-existing, nonconforming open storage shed, subject to the following conditions.

1. The applicant shall obtain a zoning permit from the Zoning Administrator prior to construction of the replacement shed. 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 will be required.
2. The location of the shed must be as shown on the application sketch, however it shall extend no more than 13ft. 4in. (as measured from the house to the edge of the roof eave) within the required rear setback area, which represents a 50% increase in the existing degree of noncompliance. No additional enlargement or expansion shall occur without variance approval from the DRB.
3. The applicant may enclose the shed along the approved footprint without further review or approval from the DRB.
4. Applicable outdoor lighting standards under Section 3.9 and performance standards under Section 3.12 shall apply. Any lighting fixtures attached to the shed shall be cast downward or be designed to minimize glare and not direct light upward or onto adjoining properties. Fixtures should be on timers or sensors. No hazardous materials shall be stored within the open shed.
5. A certificate of occupancy shall be obtained from the Zoning Administrator following construction but prior to occupancy of the storage shed.

Members voting in favor: Michael Hauser, Sharon Murray, Margot Pender, Michael Rainville.

Dated at Bolton Vermont, this 9th day of July, 2007.

Sharon Murray, Chair

NOTICE: This decision may be appealed to the Vermont Environmental Court by an 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 Court Proceedings.