

Town of Bolton
Development Review
Board

3045 Theodore Roosevelt Highway
Waterbury, VT 05676
(802) 434-5075

In re: **Holsten/ Waiver Request**
November 14, 2007

Findings & Decision

INTRODUCTION & PROCEDURAL HISTORY

1. This proceeding involves a waiver request submitted by Scott and Joyce Holsten under Sections 3.8 (Nonconforming Uses & Structures) and 5.4 (Conditional Use Review) of the Town of Bolton Land Use & Development Regulations. The Holsten's single family dwelling is located at 3477 Stage Road in the Rural II Zoning District (Tax Map Parcel ID # 11-0033477). The request is to waive, subject to conditional use review by the Bolton Development Review Board (DRB), the district 50-foot side setback requirement to replace a pre-existing nonconforming deck with an attached mudroom and garage within the setback side setback area.
2. The application for a zoning permit, dated July 31, 2007 and received by the Town with fees on August 28, 2007, was initially denied by former Zoning Administrator Lawrence Peterson because the proposed additions did not meet the RII District side setback requirement. A letter from the Town Clerk, dated 8/30/07 (sent following the departure of the zoning administrator), recommended that the Holsten's apply for a conditional use waiver under Section 3.8. Joyce Holsten also contacted the DRB Chair, Sharon Murray, regarding clarification of available options (waiver or variance) under the town's regulations.
3. A complete application for a conditional use waiver, including sketch plan, parcel (location) map and fees, was filed at the Town Office on September 3, 2007, and referred to the DRB on September 6, 2007. A copy of the application is on file at the Bolton Town Office.
4. A public hearing was scheduled for the next regular meeting of the DRB, on October 24, 2007. A scheduling letter, dated 09/06/07, was mailed to the Holsten's on September 12, 2007.
5. The notice of public hearing (on file at the Town Office) was:
 - Published in the *Mountain Gazette* on 10/04/07
 - Mailed to the applicants on 10/09/07.
 - Mailed to all abutters on 10/09/07.
 - Posted at the Bolton Town Office, Bolton Store and Smilie School on 10/09/07.
6. The application was considered by the Development Review Board at a warned public hearing held at the Bolton Town Office on Wednesday, October 24, 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).
7. Present at the hearing were the following members of the Development Review Board, representing a quorum of the Board:
 - Sharon Murray, Chair
 - Jerry Chabot, Vice Chair
 - Michael Hauser
 - Margot Pender
 - Michael Rainville

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The Chair disclosed ex parte communications with the applicant, consisting of a meeting and phone calls to discuss applicable regulations and DRB procedures. No conflicts of interest were declared.

8. 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 was determined for the record that Scott and Joyce Holsten, as the applicants, and the following abutters who participated in the hearing, through the submission of written or oral testimony, met the criteria for interested person status and retain the right to appeal any decision of the DRB under these proceedings.

- Stewart Robinson 3475 Stage Road, Jericho, VT 05465
- William Rivers 3547 Stage Road, Jericho, VT 05465

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

9. 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 8/28/07, including letters from abutters Stewart Robinson and William Rivers (also dated 8/27/07) indicating that they were aware of and had no concerns about the application.
 - Application for waiver/conditional use review, signed and dated 9/03/07.
 - Photocopy of the Bolton Tax Map showing the location of the Holsten property in relation to adjoining parcels and rights-of-way.
 - Sketch of the Holsten parcel, prepared by the applicants, showing the existing lot configuration and the locations, dimensions and setback distances from property lines for the existing house and deck, and the proposed mudroom and garage.
10. During the course of the hearing, oral testimony was presented under oath to the Development Review Board by the applicants, and abutter Stuart Robinson, as reported in the minutes of the meeting on file at the Bolton Town Office. Mr. Robinson indicated that he had no problem with the proposed location of the mudroom and garage.
11. The public hearing was adjourned on October 24, 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 3477 Stage Road in the Town of Bolton, Vermont (Tax Map #11, Parcel ID #00033477).
2. The property is located in the Rural II (R2) District as depicted on the Town of Bolton Zoning Map on record at the Bolton Town Office, and described in Table 2.5 of the Bolton Land Use & Development Regulations.
3. The lot is an irregularly shaped, pre-existing parcel with an area of 0.52 acres and 150 feet of road frontage on Stage Road.

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4. The single family dwelling on the parcel, constructed prior to the adoption of zoning regulations, is located 15 feet from the northern property line, 30 feet from the southern property line, and 81 feet from the road right-of-way. An attached deck (12' x 15'), to be removed, is located on the south side of the house 18 feet from the southern property line.
5. The existing house and deck are located within required district 50-foot side setback distances from property lines. Because these were legally in existence as of the effective date of the BLU&DR, they meet the requirements for pre-existing nonconforming structures as defined under the regulations.
6. The applicants seek a waiver to replace the deck with an attached mudroom (12' x 8') and garage (24' x 24') as shown on the sketch plan.
7. Because of lot configuration, and the locations of an existing shed, well, septic tank and leach fields (as shown on the sketch plan), there are no other suitable locations on the property to construct the proposed mudroom and garage.

Waiver Criteria (Section 3.8):

8. Under Sections 3.1 and 3.8(B)(4) of the regulations, the DRB may allow for the replacement and enlargement of a 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.
9. The house currently encroaches 20 feet into the required 50-foot side setback area. The maximum encroachment the DRB can grant, under the waiver provision, is an increase of 50% (10 feet), or a total encroachment of 30 feet. New structures must therefore be set back at least 20 feet from the side property line. The garage and mudroom, as shown on the sketch, meet this 20-foot setback requirement.

Conditional Use Criteria (Section 5.4):

10. The DRB finds that the proposed mudroom and garage will have no undue adverse effect on the capacity of existing or planned community services or facilities. They will require no additional community facilities or services.
11. The DRB finds that the proposed mudroom and shed will have no undue adverse effect on the character of the area. The new structures are allowed accessory structures in this district. Participating abutters indicated, through written or oral testimony, that they had no concerns about the location or size of the mudroom and garage as proposed.
12. The DRB finds that the proposed mudroom and garage will have no undue adverse effect on roads and highways in the vicinity. No additional traffic will be generated.
13. The DRB finds that, except for district side yard setback requirements, the proposed mudroom and garage comply with all other municipal bylaws and ordinances currently in effect.
14. The DRB finds that the proposed mudroom and garage will have no undue adverse effect on the sustainable use of renewable energy resources, including adjoining solar access or local wood supplies.
15. The DRB finds that, due to the type and scale of this project – the replacement of a deck and construction of a small mudroom and garage – site plan review standards are not applicable.

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16. The DRB finds that the proposed mudroom and garage conform to applicable policies and recommendations of the Bolton Town Plan for this district as most recently adopted (June 4, 2007).
17. The DRB finds that the proposed mudroom and garage, except for district side setback requirements, meet all other zoning district and use standards.
18. 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 structures will be used to store household goods and motor vehicles. No hazardous materials will be stored on-site.

DECISION & CONDITIONS

Based upon these findings, the Development Review Board **APPROVES** (5-0) the request by Scott and Joyce Holsten for a waiver from side setback requirements to construct a mudroom and garage on their property as described and shown on the application sketch plan, subject to the following conditions.

1. The applicant shall obtain a zoning permit from the Zoning Administrator prior to construction of the mudroom and garage. 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 approval is for the construction of an attached mudroom and garage as shown on the application sketch. Both the mudroom and garage, as constructed, shall be located at least 20 feet from the side (southern) property boundary, representing the maximum encroachment allowed under waiver provisions. No construction, enlargement or expansion shall occur within this 20-foot required setback without variance approval from the DRB.
3. Outdoor lighting standards under Section 3.9 and performance standards under Section 3.12 shall apply as applicable. Any lighting fixtures attached to the mudroom and garage 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.
4. A certificate of occupancy shall be obtained from the Zoning Administrator following construction but prior to occupancy or use of the mudroom and storage shed.

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

Dated at Bolton Vermont, this 14th day of November, 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.