

## Findings & Decision

### INTRODUCTION & PROCEDURAL HISTORY

1. This proceeding involves a notice of appeal and variance request by Timothy McGee, represented by Harley G. Brown Esq., under Sections 9.5 (Appeals) and 9.6 (Variance Criteria) of the Town of Bolton Land Use & Development Regulations (BLU&DR) as adopted January 5, 2005 (effective January 26, 2005). The request is for a variance to construct a covered (three-season) front porch and separate, attached deck within the required 25-foot side setback area. The property is a single family dwelling located in the Resort Residential (RR) District at 409 Wentworth Road (Parcel ID# 4-9000409).
2. The notice of appeal, application for a variance (dated July 27, 2007), and associated fees were received by the Town on July 31, 2007, and referred to the Bolton Development Review Board (DRB) on August 13, 2007. A copy of the application is available at the Bolton Town Office. A scheduling letter was mailed to the applicant on August 15, 2007.
3. The notice of public hearing (on file at the Town Office) was:
  - Submitted to the Mountain Gazette on 8/28/07 for publication on 9/6/07.
  - Mailed to the appellant, Timothy McGee, c/o Harley G. Brown, Esq., on 9/6/07, with a sign for posting on the applicant's property, within view of Wentworth Road.
  - Mailed to the list of adjoining (on file at the town office) on 9/6/07
  - Posted at the Bolton Town Office, Smilie School and Bolton Store on 9/6/07.
4. The application was considered by the DRB at a public hearing on Wednesday, September 26, 2007. The hearing was recessed on September 26<sup>th</sup>, to give the applicant time to submit additional information, and was reconvened on October 24, 2007.
5. Present at the September 26<sup>th</sup> and October 24<sup>th</sup> hearing dates were the following members of the DRB, representing a quorum of the Board:
  - Sharon Murray, Chair
  - Jerry Chabot
  - Michael Hauser
  - Margot Pender
  - Michael Rainville

No ex parte communications or conflicts of interest were declared.

6. At the outset of the hearing the DRB 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 Timothy McGee, as the appellant, met the criteria for interested person status and retained the right to appeal any decision of the DRB under these proceedings. No other person requested interested person status.
7. During the hearing, testimony was submitted under oath by the following persons representing Timothy McGee, as reflected in meeting minutes on file at the Bolton Town Office:
  - Harley G. Brown, Esq. (Attorney)
  - William Stoler (Project Architect)

**Bolton Development Review Board – Findings of Fact and Decision**  
*McGee Variance Request – November 28, 2007*

8. During the hearing, the following exhibits were submitted to DRB and entered into the hearing record, which are available at the Bolton Town Office:
  - Zoning Permit Application, dated 7/3/2007 as denied by Zoning Administrator Lawrence Peterson on 7/5/2007 for not meeting district setback requirements.
  - Notice of Appeal (letter) dated 7/27/07, with an application to the DRB for a variance, dated 7/30/07.
  - Sketch plan (no date) showing existing and proposed footprints and setbacks in relation to front and side property lines.
  - Photographs of the site.
9. 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 application materials, testimony, and other submitted evidence the Development Review Board makes the following findings:

**Property:**

1. The subject property is located at 409 Wentworth Road in the Town of Bolton (Parcel ID# 4-09000409). The lot is a narrow, irregularly shaped, 1.1-acre lot. The property includes a 2-story single family dwelling (32 ft. x 34 ft.) constructed nine years ago, with an addition that was added three years ago. The dwelling is served by community water and wastewater systems.
2. The property is located in the Resort Residential (RR) District as depicted on the Town of Bolton Zoning Map on record at the Bolton Town Office, and described in Table 2.3 of the Bolton Land Use & Development Regulations. Within the RR District the minimum required lot size is 2.0 acres, the minimum front setback distance is 15 feet from the road right-of-way, and the minimum side setback distance is 25 feet from side property boundaries.
3. The lot is a pre-existing, nonconforming lot that predates the adoption of zoning and subdivision regulations, and as such may be developed even though it does not conform to the minimum lot size requirement under the current Bolton Land Use & Development Regulations as long as other applicable requirements are met. The current dwelling, as shown on the sketch plan, conforms to zoning district setback requirements.
4. The appellant seeks variances to construct:
  - a. An attached, covered (three season) front porch, measuring 8 ft. x 32 ft. which, as shown on the sketch plan, would meet the front setback requirement, but encroach two (2) feet into the side yard setback area; and
  - b. A separate, attached, open deck on the side of the dwelling, measuring 8 ft. x 14 ft. which, as shown on the sketch plan, would encroach more than five (5) feet into the side yard setback area.

Variance Criteria (Section 9.6): In order to grant a variance, the DRB must find that *all* of the following facts are found, as specified in this decision.

**Bolton Development Review Board – Findings of Fact and Decision**  
*McGee Variance Request – November 28, 2007*

5. There are unique physical circumstances or conditions, peculiar to this property, which result in an unnecessary hardship that is not due to conditions created by the Bolton Land Use & Development regulations for the zoning district which the property is located. These include the following:
  - a. The lot is a small, pre-existing nonconforming, irregularly shaped lot.
  - b. The existing dwelling sits at an angle to the Wentworth Road and side property lines.
  - c. Steep slopes to the rear of the property, immediately behind the existing house, limit the buildable area to front and side areas of the property as proposed for development.
  - d. The hardship reported by the applicant is the need for an additional entrance for purposes of safety. Currently there is only one side entrance to the house, indicated as the “front door” on the sketch plan.
6. Because of these unique circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Bolton Land Use and Development Regulations, and authorization of a variance is necessary to enable the reasonable development of the property.
  - a. In combination, existing site conditions preclude placement of the front porch, as proposed, in another location on the dwelling in compliance with the required side setback distance.
  - b. The proposed side entrance and deck, however, could be relocated or resized to meet district setback requirements.
7. The unnecessary hardship has not been created by the appellant.
  - a. The hardship is due to in part existing site conditions, including steep topography and the location of the existing house on the lot.
  - b. The existing house predates current zoning, but appears to have been sited to meet the 30-foot side setback requirement under the town’s previous regulations (actual side setback distances, as shown on the sketch plan, vary from 27.3 ft to 41.4 ft). As a result, because of the angle the dwelling sits on the site, a front porch built on the remaining, buildable portion of the lot could not meet the side setback requirement; however the deck, if relocated more to the rear of dwelling (e.g., on the other side of the chimney), could be built in conformance with the regulations.
8. For the following reasons, the issuance of a variance will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare:
  - a. The purpose of the Resort Residential District [Table 2.3 (A)] is to allow for moderate densities of coordinated, well-planned recreational, lodging and residential development in the immediate vicinity of the Resort Village District (Bolton Valley Resort) in areas served by centralized infrastructure and utilities.
  - b. Residential uses are allowed within this district. The existing pattern of subdivision and development in this neighborhood, which predates zoning and subdivision regulations, allows for moderate densities of residential development. As a result, the requested variances would not increase the density of development or alter the existing essential character of the neighborhood as its character as defined in the district purpose statement. No significant natural resources would be affected.

- c. The front porch would replace an existing, fenced in front yard area as shown on photographs.
  - d. The adjoining, potentially affected property includes single family dwelling located more than 30 feet from the subject dwelling. Adjoining property owners submitted no objections to the variance request.
  - e. The variance would not reduce access to renewable energy resources, nor be detrimental to the public welfare.
9. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.
- a. The enclosed porch, as proposed, was reduced in size so that one corner would extend no more than two (2) feet into the side setback area, and as such would meet the minimum variance necessary to afford relief, and provide an additional access to the dwelling.
  - b. The attached deck, as proposed, could be relocated or reduced in area to conform to the regulations, and therefore does not represent the least deviation possible from bylaw requirements. In addition, the third entrance also is not necessary to meet the hardship reported by the applicant, i.e., the need for an additional entry.

**DECISION & CONDITIONS**

1. Based upon these findings, the Development Review Board **DENIES (5-0)** the request by Timothy McGee to for a variance under Section 9.6, from the required minimum side setback of 25 feet under Table 2.3 (Resort Residential) of the Bolton Land Use and Development Regulations to construct an attached open deck, as shown on the sketch plan, within the side setback area. The requested variance does not meet variance criteria under findings #6, #7 and #9 above.

Members voting against granting the variance, under criteria #6, #7 and #9: Chabot, Hauser, Murray, Rainville, Pender

2. Based upon these findings, and subject to the conditions set forth below, the Development Review Board **APPROVES (4-1)** the request by Timothy McGee for a variance under Section 9.6, from the required minimum side setback of 25 feet under Table 2.3 (Resort Residential) of the Bolton Land Use and Development Regulations to construct an enclosed front porch as shown on the sketch plan. This approval, and the issuance of a zoning permit, is subject to the following conditions:
- a. The front porch, as constructed, shall meet applicable district front setback requirements, and encroach no more than 2 feet into the side setback area, as shown on the sketch plan – a minimum setback of 23 feet from the rear property line shall be maintained. This represents the minimum variance to afford relief and provide a second entrance to the dwelling.
  - b. The appellant shall obtain a zoning permit from the Zoning Administrator prior to construction of the front porch. 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.

**Bolton Development Review Board – Findings of Fact and Decision**

*McGee Variance Request – November 28, 2007*

- c. The Zoning Administrator may inspect construction at any time during construction to ensure that setback requirements are met. The appellant shall obtain a certificate of occupancy from the Zoning Administrator immediately following the completion of construction. Prior to the issuance of a temporary or final certificate of occupancy, the Zoning Administrator shall verify that the front porch has sited and constructed as approved by the Development Review Board.

Members voting to grant the variance under each of the above findings and variance criteria: Chabot, Hauser, Pender, Rainville

Member voting against granting the variance: Murray (under Findings #6, #7 and #9).

Dated at Bolton Vermont, this 28th 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.