

**Town of Bolton**  
**Development Review**  
**Board**

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

In re: **Town of Bolton/ Waiver Request**  
**April 30, 2008**

**Findings & Decision**

**INTRODUCTION & PROCEDURAL HISTORY**

1. This proceeding involves a waiver request submitted by the Town of Bolton under Sections 3.8 (Nonconforming Uses & Structures) and 5.4 (Conditional Use Review) of the Town of Bolton Land Use & Development Regulations. The Bolton Town Office is located at 3045 Theodore Roosevelt Highway (RT 2) in the Village I District (Tax Map Parcel ID #15-2003045). The request is to waive, subject to conditional use review by the Bolton Development Review Board (DRB), the district rear setback requirement in order to allow a previously installed roof over the rear entrance to the building.
2. The Zoning Administrator informed that Town on January 22, 2008 that a waiver from the Development Review Board was required for a roof that had been installed over the rear entrance of the Town Office, in violation of the 10-foot rear setback requirement as authorized under the variance granted by the Development Review Board on July 18, 2007.
3. A complete application for conditional use approval for a waiver, dated February 16, 2008, was received by the Town and referred to the DRB on February 23, 2008. A copy of the application is on file at the Bolton Town Office. A public hearing was scheduled for the next regular meeting of the DRB, on March 26, 2008.
4. The notice of public hearing (on file at the Town Office) was:
  - Mailed to the applicants on February 23, 2008.
  - Published in the *Mountain Gazette* on March 6, 2008
  - Mailed to all abutters on March 11, 2008.
  - Posted at the Bolton Town Office, Bolton Store and Richmond and Jonesville Post Offices on March 11, 2008.
  - Posted on town property in view of Route 2 on March 11, 2008.
5. The application was considered by the Development Review Board at a warned public hearing held at the Bolton Town Office on Wednesday, March 26, 2008. 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).
6. 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
  - Jen Andrews, Alternate

No ex parte communications or conflicts of interest were declared.

7. 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 the Town of Bolton, as the applicant, meets the criteria for interested person status and retains the right to appeal any decision of the DRB under these proceedings. The following appeared and

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presented testimony on behalf of the town, as reported in the minutes of the meeting on file at the Bolton Town Office:

- John Devine, Bolton Select Board

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

8. At the start of the hearing, DRB Chair Sharon Murray requested clarification from the Zoning Administrator, Miron Malbeouf, whether this should be treated as a variance or a waiver request. The Zoning Administrator indicated that, because the building at the time the roof was constructed was an approved, pre-existing nonconforming use, in his opinion a waiver was appropriate. The DRB agreed, on a vote of 5 – 0 to hear the application as a waiver request, subject to conditional use review.
9. During the course of the hearing the following exhibit was submitted to the Development Review Board for consideration, which is on file at the Bolton Town Office:
  - Amended site plan, dated February 16, 2008, showing the location of the 3-foot by 5-foot roof constructed over the rear entrance of the building.
10. The public hearing was adjourned on March 26, 2008. 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 3045 Theodore Roosevelt Highway (RT 2) in the Town of Bolton, Vermont (Tax Map #15, Parcel ID #2003045). The new town office, constructed in 2007, office parking area, fire station, fire station parking area, on-site water and wastewater systems, and a memorial are located on the property.
2. The subject property is bounded to the north by Route 2, to the east by Harley Lane (TH #18), to the south by the New England Central Railroad right-of-way, and to the west by the cemetery lot.
3. The town lot frontage along RT 2, as calculated by DG Morin Construction, LLC from survey data, is 409.75 feet. RT 2 has a 50-foot right-of-way along the property. The town office portion of the lot and parking area are accessed from Harley Lane (TH #18) to the east. The fire station and station parking area are accessed directly from RT 2.
4. The property is located entirely within the Village I (VI) Zoning District as depicted on the Town of Bolton Zoning Map on record at the Bolton Town Office, and described in Table 2.1 of the Bolton Land Use & Development Regulations. It is not located within the Flood Hazard Overlay District (designated 100-year floodplain).
5. The town lot is a pre-existing, nonconforming small lot of 0.64 acres (27, 878.4 SFT), as calculated from survey data, which does not meet the current district minimum lot area requirement of one (1) acre. The lot meets the minimum district frontage requirement of 150 feet.

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6. Lot depth varies from a minimum of 76.6 feet to a maximum of 89.3 feet. The new office building meets minimum district front (15 feet) and side yard (25 feet) setbacks, but does not meet the minimum required rear yard setback (25 feet). A variance granted by the DRB on July 18, 2007 allowed a setback distance of 10 feet from the rear property line, establishing the office, as constructed, as a nonconforming structure that encroaches 15 feet into the rear setback area.
7. The rear entrance was installed as shown on the site plan approved by the DRB, with a rear entry pad but no roof. According to testimony provided by Select Board Chair John Devine, as recorded in the minutes of the meeting, the roof was later installed over the pad to prevent wind, snow and water from coming into the rear entrance. The roof, as shown on the revised site plan, is three feet by five feet and encroaches three feet into the rear setback area.

**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 nonconformance no more than 50% as a conditional use subject to conditional use review and approval.
9. The town office currently encroaches 15 feet into the required 25-foot rear setback area. The maximum encroachment the DRB can grant, under the waiver provision, is an increase of 50% (7.5 feet), or a total encroachment of 22.5 feet. The roof must therefore be set back at least 2.5 feet from the rear property line. The roof as constructed and shown on the revised site plan is located seven feet from the property line.

**Conditional Use Criteria (Section 5.4):**

10. The DRB finds that a covered rear entrance will have no undue adverse effect on the capacity of existing or planned community services or facilities. The roof protects the rear entryway from wind, weather and water damage. It is therefore intended to improve and protect an existing public facility.
11. The DRB finds that the roof over the rear entryway will have no undue adverse effect on the character of the area. The roof extends over the existing pad, but does not create an enclosed entrance. It will therefore not increase lot coverage or effectively decrease the existing rear setback distance, as measured from the existing pad approved by the DRB.
12. The DRB finds that the roof over the entryway will have no undue adverse effect on roads and highways in the vicinity. It is located in the rear of the building, away from access and parking areas. No additional traffic will be generated.
13. The DRB finds that, except for the rear side yard setback requirement, the covered entry complies with all other municipal bylaws and ordinances currently in effect.
14. The DRB finds that the covered entry 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 covering the rear entryway does not represent a substantial change to the existing site plan, so site plan review standards are not applicable.
16. The DRB finds that the rear entryway as modified conforms to applicable policies and recommendations of the Bolton Town Plan for this district as most recently adopted (June 4, 2007).

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17. The DRB finds that the rear entryway, except for district rear setback requirements, meets all other applicable zoning district and use standards.
18. The DRB finds that minimum performance standards under Section 3.12 do not apply to this project.

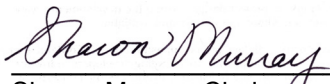
**DECISION & CONDITIONS**

Based upon these findings, the Development Review Board **APPROVES** (5-0) the request by the Town of Bolton for a waiver from rear setback requirements a roof over the rear entrance to the town office as constructed and shown on the revised site plan, subject to the following conditions.

1. This approval is for a 3-foot by 5-foot roof covering the rear entrance of the Bolton Town Office as constructed and shown on the revised site plan submitted as part of the application. The roof shall extend no more than three into the rear setback area, and shall not define an enclosed area or addition to the building. No further construction, enlargement or expansion shall occur within the required setback area without variance approval from the DRB.
2. The applicant shall obtain a zoning permit from the Zoning Administrator for the roof as approved and installed. 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. The zoning permit shall administratively amend the site plan for the town office as approved by the DRB. No additional site plan approval from the DRB is required for the covered entryway.
3. Outdoor lighting standards under Section 3.9 (outdoor lighting) of the BLUDR shall apply as applicable. Any lighting fixtures attached to roof 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.

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

Dated at Bolton Vermont, this 30th day of April, 2008.

  
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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.