

Town of Moretown Development Review Board
79 School Street, Moretown, Vermont 05660

Appeal of Moretown Holdings LLC from Zoning Administrator's Denial of a Permit for
Accessory Structure at 731 Lover's Lane

Decision With Respect to Hearing Held January 23, 2020

The following constitutes the Decision of the Moretown Development Review Board with respect to Moretown Holdings LLC's appeal of the Zoning Administrator's denial of a permit for an accessory structure at 731 Lover's Lane. The Board separately issued Minutes describing the evidence received and proceedings before the Board on January 23, including that the Board engaged in a deliberative session, and upon exiting voted to close the evidence.

Those Minutes are incorporated into this Decision by reference. The Board's Decision is set forth below:

Decision

1. As an initial matter the Board concludes that the hydroelectric facility foundation does not qualify as a "structure" which is eligible for expansion or enlargement with approval of the DRB under Section 4.11(C). Section 4.11(B) generally prohibits land development within the fifty-foot river buffer strip stating: "No development, excavation, landfill or grading shall occur within the strip." The foundation is a historical remnant of a long abandoned hydroelectric facility. There is no evidence it has played any role in the residential use of the subject parcel dating from construction of the River House in approximately 1967. In the context of Sections 4.11, and 4.8, which under limited circumstances allows expansion or enlargement of a non-complying structure, it has not been understood to be an assembly of materials which has value for occupancy or use during the time of the residential use of the parcel. That the Town Listers attributed no value to the foundation reflects this finding.

2. Even if the foundation is considered a structure for purposes of Section 4.11 and 4.8, it does not meet criteria for expansion set forth in Section 4.8(A) and 4.8(C). Section 4.(A)(4) states that a non-conforming structure shall not have its degree of non-compliance increased.

Presently the foundation lies within the river setback buffer and would appear to lie reasonably flush with surrounding land. The application proposes to drive steel piles into the foundation and place a previously constructed one story building elevated ten feet into the air, with a wrap around deck. Although this improvement lies within the footprint of the old foundation, it represents a significant and substantial encroachment of a new accessory structure into the river setback buffer. In the view of the Board this represents an increase in the degree of noncompliance within the meaning of Ordinance Section 4.8(A)(4).

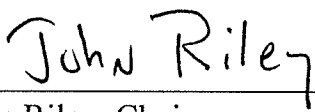
3. In addition, the Board concurs with the Zoning Administrator's analysis that if the foundation is considered a structure, it also does not meet Section 4.8(C)'s requirements for alteration. At present the Town Listers who serve as the Town's assessment officials have not attributed any assessed value to the foundation. The Ordinance states that a proposed alteration must not exceed an aggregate cost of 35 percent "for residential properties". The Section begins with the language, "Any nonconforming building or structure may be altered...". The Board concludes the intent of the Ordinance is to consider the type of nonconforming building or structure which is proposed for alteration, in conducting the assessed value and cost analysis outlined in the Section.

Use of the phrase "residential properties" is to distinguish between the higher percentage of cost improvements allowed for a nonconforming residential building or structure, in comparison to commercial or industrial properties. It does not mean that the total value of residential buildings, including those lying outside the river corridor setback, should be considered when conducting the analysis for a proposed alteration of a noncomplying structure.

4. As shown on Applicant's Site Plan the two existing residences lie outside the river setback area. The proposed new accessory structure building would lie almost at the front edge of the setback area. Ironically, if the application was allowed, and the new structure built, it could be used as an argument that a future proposed expansion of the River House into the setback area might be permissible because the degree of noncompliance of the overall property would not be increased. The Board concludes that the old foundation is not a "structure" eligible for enlargement within the Section 4.11(C) exception, and otherwise does not meet the criteria for alteration under Section 4.8. The decision of the Zoning Administrator to deny the permit application is affirmed.

Dated this 3rd day of February, 2020.

Moretown Development Review Board



John Riley, Chair