

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

Maia Hanron No. 20-10 – Appeal of Decision of Zoning Administrator to Deny
Application to Expand Non-Conforming Residence at 1995 Jones Brook Road

Minutes of Hearing Held June 4, 2020

Because of the Covid-19 Pandemic this hearing was held by conference call with the call-in number, and participant access code provided in the Published Warning and notices mailed abutting landowners. Present for the Board were John Riley, Paula Woods, Dave Russo, Jim O'Neill, and Greg Nagurney. Also present was alternate Board Member Craig Oshkello who is a DRB member but did not participate in the hearing. Zoning Administrator David Specht, Applicant Maia Hanron, and neighboring property owner Robin Campbell were also present.

In advance of the hearing Board Members received copies of the Zoning Permit Application, Development Review Board Application, a hand-written sketch plan showing the parcel and residence location, a "top view" sketch, and several copies of photos of the property.

John Riley called the meeting to order at 6:35 P.M. Ms. Hanron summarized the Application. The rear portion of the residence has a deck extending to an existing concrete retaining wall which lies 15 feet from the rear property line of the parcel. As shown in the photos, and described by Maia, the retaining wall is bowing, and the deck is solely used to access the backyard based on safety concerns. Below the deck is an open area, which looks much like a carport. The proposal is to place concrete footings as supports, and then build upward two stories from approximately the first floor of the existing residence upward. The intent is to add a bedroom and additional living space.

The existing location of the retaining wall and deck violate the 25 foot rear and side property setbacks as contained in the Moretown Zoning Ordinance. The Application lists the existing setback distances as 20 feet from the Campbell property line, although there was discussion that the structure may be somewhat closer and the top view plan shows it as 15 feet. The sketch plan shows the septic tank location, and a leach field which extends on to the Campbell property.

Ms. Hanron stated she believed her property came with an existing easement for the leach field. Mr. Campbell remarked he is not aware of such deeded rights. He was aware of a water right to cross the parcel to take water from Jones Brook, and a spring right which may have been abandoned years ago.

During the hearing Zoning Administrator David Specht summarized his analysis of the application under the Ordinance. Section 2.4, Table 2.3 (Ag-Res) requires a 25-foot rear and side setback. He then looked to Section 4.8 which addresses Nonconformities. Under Subsection C a nonconforming building may be altered, but the addition or expansion must comply with the regulations, with an example of setback requirements provided. As the present proposal represents an expansion of the building within the setback violation, the Zoning Administrator denied the proposal.

Mr. Campbell noted he did not object to repair of the retaining wall and replacement of the back deck. He is concerned that little is known about the existing septic system, and is opposed to Ms. Hanron expanding the living space.

Upon Board questioning, Ms. Hanron advised she had not considered whether a State wastewater permit would be required for her proposed expansion. As stated in the Zoning Application, the present anticipated cost for the addition is \$30,000, and she expressed concern about incurring the expense of improving the septic system.

In the context of whether the proposed addition might qualify under Section 4.8(C) which allows certain alterations if the aggregate cost does not exceed 35% of the current assessed value, Ms. Hanron reviewed the property's tax bill and stated the current assessed value is \$154,800.

At approximately 7:15 p.m. Greg Nagurney made a motion to close the evidence, with the Board to proceed to a deliberative session following conclusion of the second hearing. Paula seconded and all approved.

Application No. 20-08 by the Town of Moretown in Conjunction with Upper Valley Services, Inc. Relating to Repair of a River Bank Slope Failure in the Town Right of Way Off Dickerson Road

The hearing was called to order at 7:19 p.m. Present for the Town of Moretown was Martin Cameron, Road Foreman. David Specht summarized how the Application was considered under the Town Zoning Ordinance. Under the Ordinance, any development in the Flood Hazard Overlay District is subject to conditional use review under Section 5.2. Although specific dates and events were not described, it was stated that a fairly large maple tree lying between Dickerson Road and the Mad River collapsed into the River causing a slope failure with associated road material sliding down the slope. This resulted in a dangerous condition, reducing Dickerson Road in the area to a single lane of traffic. Martin stated it represented a very hazardous situation with a significant possibility that the balance of the roadway could fail and slide towards the river.

Obtaining repair approval was difficult because of limited travel and personnel availability during the Pandemic. The US Army Corps of Engineers in Colchester; the State Stream Alteration Specialist (Jaron Borg); State Flood Plain Manager (Ned Swanberg); and the Wetlands Division, all eventually granted approval for the repairs and the work has been completed.

On questioning, Martin stated he believed approximately 300 yards of large rock material was placed in the slide area. The resulting slope is steeper than what the Town would have preferred, but was required to secure approval to not encroach into the floodway to a greater extent than existed before the slide.

Although the work has been completed, approving agencies have not inspected or provided final approval. The Army Corps has 30 days after notice of completion to do so.

Martin advised an element of the project is to place approximately 1,200 feet of guardrail along the roadway which will be done at a later date.

David Specht noted after the fact the Town permit approval appears contemplated by the zoning fee schedule as the fee is doubled for after-the-fact approval. Greg made a motion to approve the application as presented subject to the condition that the Town obtain approval from the Army Corps of Engineers and any other required post-work approval that the Project was completed consistent with regulatory Agency approvals. Paula

seconded; all approved except Jim O'Neill (abstain) who lives on Dickerson Road and during the hearing confirmed his view why the road presented a serious hazard.

Following the completion of the Dickerson Road Application, Martin Cameron, David Specht, and Craig Oshkello exited the call. The Board moved into deliberative session to discuss the Maia Hanron Application. A few minutes into the discussion the conference call terminated for unknown reasons. The Board was able to re-establish communication within a few minutes, through a Board Member-initiated conference call, and proceeded to deliberate and reach a decision on the Maia Hanron Application set forth below. The meeting was then adjourned at approximately 8:40 P.M.

Decision on Application of Maia Hanron to
Expand Non-Conforming Residential Structure

As noted in the Minutes, the main issue is whether the application can qualify as expansion of a nonconforming structure under Section 4.8. Section 4.8(A) allows nonconforming structures which existed at the time zoning regulations were enacted to be continued provided the five conditions in the Section are met. The existing residential use is a conforming use in the Ag-Res District, and so only the three conditions which apply to nonconforming structures need to be considered.

4.8(A)(2) states a nonconforming structure which is devoted to a conforming use may be reconstructed, structurally altered, restored or repaired, in whole or in part with the provision that the degree of the nonconformance shall not be increased. Subsection A(4) similarly states that a nonconforming structure shall not have its degree of non-compliance increased.

Subsection (A)(3) allows a nonconforming structure to be maintained, repaired or restored to a safe condition as required by the Zoning Administrator.

The present proposal involves a nonconforming structure which the Applicant proposes to structurally alter by replacing the deck and retaining wall with structural support footings and two stories of living space. Applicant states she will confine the work to the existing structure's footprint, and the residence as altered will be no closer to the common boundary line with the Campbell property than the retaining wall at present. In the Board's view the degree of non-compliance will not increase as a result of the project.

Section 4.8(C) states that "a nonconforming building or structure may be altered, including additions to the building or structure, provided such alternation does not exceed in aggregate cost 35 percent for residential properties. . . of the current assessed value as determined by the Town Assessor. If an addition or expansion to a building or structure is proposed, the addition or expansion itself must comply with the provisions of these regulations (e.g., setback requirements)."

The language of the first sentence above supports the Board's conclusion that an "alteration" can include a building addition provided it does not exceed in aggregate cost 35% of the assessed value for a residence. The second sentence states the addition must comply with zoning regulations which the Board interprets to mean other aspects of the ordinance than the element which is the nonconformity. For example, the proposed alteration could not violate height restrictions, or if it involved a building in the flood hazard area, any alteration would need to comply with requirements applicable to the flood hazard area.

Subsection (C) does require that the aggregate cost be no more than 35% of the Town assessed residential value. The current proposal appears to meet this requirement.

However, as set forth in the Application, and as stated by the Applicant at the June 4 hearing, the intention is to create additional living space including a bedroom increasing the property from two to three bedrooms. Moretown, as is the case for most Vermont municipalities, has no role in regulating on-site water and wastewater systems. As a general matter, it is fairly well known that Vermont's Septic Regulations for residences is based on number of bedrooms, and typically expansions such as the present require a State permit. The components of the existing system, and whether there are deeded legal rights to a leach field on Mr. Campbell's property, were not clearly established at the hearing. In the Board's view, it is quite likely that the Applicant will need to secure a State permit. And if so, the associated expense and cost of any construction/alternation of the wastewater system to meet state permit requirements should be added as part of the "aggregate" cost of the proposed structural alteration in considering whether it meets the 35% limited set forth in Section 4.8(C).

Upon motion made (Jim) and seconded (Greg), the Board approves the Application as submitted subject to the following conditions:

1. That the proposed building addition be contained within the structural footprint of the existing retaining wall and deck;

2. That, associated with the permit approval, Applicant complete a Project Review Sheet with the Agency of Natural Resources, and obtain any required State permits, including a State wastewater and water supply permit, if required;
3. That the aggregate cost of the building addition, including any septic system permitting and construction/alteration costs, be no more than 35% of the existing Town assessed value of \$154,800.

All approved.

Respectfully submitted

Moretown Development Review Board

 6-10-2020

John Riley, Acting Clerk