

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

Minutes and Decision for Hearing Held November 16, 2017

Application No. 17-38: Application of Moretown Holdings, LLC to Construct Additions to Residence at 731 Lovers Lane

John Riley called the meeting to order at 6:35 p.m. Present for the Board were Erick Titrud, David Russo, Greg Nagurney, Paula Woods and John Riley. The Applicant was represented by three members of Moretown Holdings: Emily Hatch, Patrick Flynn, and Brian Calahan. Also present for the Applicant was its architect, Joe Green, of Joseph Architects and attorney, Chris Nordle of Darby, Kolter and Nordle. Town Zoning Administrator John Weir was also present.

Moretown Holdings owns a property of approximately 8.8 acres with an existing residence of 1,840 square feet (“River House”). There is a second residential structure, depicted as “Existing Upper House” on the Plans, and also referred to as the “Guest House”.

The application proposes to expand and renovate River House to 3,443 square feet. The application requires DRB review because a portion of the residential expansion would extend living space closer than 50 feet to the Mad River. As part of its application Moretown Holdings included a cover letter, conditional use addendum, and a FEMA elevation certificate. Also, two site plan maps and architectural plans showing the existing and proposed floor plans, building elevations, and roof plans.

Joe Green provided an overview of the project. The existing River House was constructed in 1967 by Jonathan Larsen. After a 1998 flooding event caused damage, town permits were obtained to install vertical concrete retaining walls anchored to ledge, and which have a combination of stone and wood facades. Mr. Green quoted from a 1998 letter of Karl Jurentkoff, a River Corridor official with the Agency of Natural Resources, who expressed no concern with installation of the retaining walls.

In his presentation Mr. Green indicated that State Flood Plain Manager, Ned Swanberg and Central Vermont River Scientist, Gretchen Alexander, of the Agency of Natural Resources attended a site visit also attended by John Weir. Mr. Green indicated state officials do not have issues with the proposed expansion of the residence towards the river, although they had not been asked to confirm the verbal assurances in writing. John Weir stated he also had communicated with the officials and no concerns were expressed.

The warned notice of the hearing indicated the Town's Flood Hazard Overlay District was part of the conditional use review. Mr. Green made reference to the site plan which depicts the current base flood elevation location. No work or development is proposed within the Flood Hazard Area. The District was referenced in part because a portion of the existing property, including stone steps towards the river, are within the Flood Hazard District.

Because no work or development is proposed for the Flood Hazard Area there was not a need to refer the application to the Agency of Natural Resources under Ordinance Section 6.4.

As part of the proposed renovation and expansion Applicant would place a "sedum" roof over the residence. The current roof is sloped. The new "green" roof would be flat with a concrete base and approximately 6 inches of soil above. The soil and organic growth would retain rain water. In the case of a torrential storm rain water which cannot be retained passes through filter fabric and down to a curtain drain such that when water flows towards the river it may be cleaner than water which sheets off the existing sloped roof. The Board accepted a print-out from the Penn State College of Agricultural Sciences summarizing use of green roofs as a stormwater management tool.

As part of the expansion of the residence into the 50 foot river bank setback an existing "herb garden" would be lost. Mr. Green contended that by transitioning to a sedum roof the amount of impervious surface associated with the property will be reduced and storm runoff diminished. David Russo inquired whether if the application was approved the Applicant would object to a permit condition requiring that the sedum roof be properly maintained so it continues to function as designed. Through Mr. Green and Mr. Nordle some concern was expressed on behalf of the Applicant that such a condition might be considered "critical" to any permit approval, such that it could not easily be modified if circumstances change in the future.

There was extensive dialogue among the Board and Applicant as to whether extending the existing house into the 50 foot river buffer strip violates Ordinance Section 4.11. Subsection (B) states land development shall be set back a minimum of 50 feet from all rivers to create a buffer strip. This 50 foot buffer strip is measured from the top of the bank, or where a clear bank is not discernible, from the mean water mark. As outlined by Mr. Green, there is no discernible clear bank at the residence location. The Applicant utilized the elevation of the river bank across the river to establish the "bank" to be at an elevation of 443.5 feet. The site plan by Grenier Engineering then demarcates a 50 foot setback on the site plan from this elevation. Approximately 400 to 500 square feet of the proposed residential expansion would be within this setback.

Subsection (B) goes on to state that no development, excavation, landfill or grading shall occur within the buffer strip except in certain limited circumstances not applicable here.

Section 4.11(C) then states, “The expansion or enlargement of any structure in existence prior to the effective date of this ordinance and not in compliance with subsection 4.11(B), above, is permitted with approval of the Development Review Board in accordance with Section 4.8”. Section 4.8 is the portion of the Ordinance which addresses non-conformities.

An extensive discussion followed as to whether the existing retention walls, concrete stone patios/terraces, steps, and “herb garden” represent a pre-existing structure that can be converted into residential living area under the exception to the Ordinance.

Joe Green acknowledged the River House itself presently complies with the setback. But in Mr. Green’s view, the existing residential use and structure encompasses both the enclosed living areas as well as associated outside terraces, patios, steps and retention walls.

Paula Woods expressed a view that here the residence represents a pre-existing “structure”. And the Applicant is proposing to expand what is now a conforming structure, into the mandatory setback, and making it a non-complying structure.

If, as the Applicant contends, the retaining walls, patios, and terraces are all part of one existing nonconforming structure, there is the further question of whether as a non-conforming structure it can be expanded to construct residential living space within the setback under Section 4.8. This appears to implicate primarily 4.8(A)(2) and (4). However, the Board also discussed the potential application of Section 4.8(C). The latter section provides that a non-conforming building or structure may be altered, including additions to the building or structure, provided the alteration does not exceed an aggregate cost, 35% for residential properties...of the current assessed value as determined by the town assessor. It goes on to state that if an addition or an expansion to a building or structure is proposed, the addition or expansion itself must comply with the provisions of the regulations. For example set back requirements.

Joe Green indicated no budget had yet been developed for the project. The initial house was built in 1967 and will require significant renovations to improve it to modern standards. To address water infiltration issues, a perimeter curtain drain will be installed around the entire residence as reconstructed. Mr. Green stated typical construction costs for a high end residence can be as high as \$300-\$400 per square foot. John Weir reviewed the Town records and indicated the current assessed value is \$2,467,000. There was a comment that Moretown Holdings paid substantially less than this for the property.

The Board discussed whether it wished to conduct a site visit of the property. And whether if it did so, it wished to reserve the right to take additional evidence. The consensus of the Board was that it would enter into a deliberative session this evening to

consider the merits of the Application. Before doing so it would continue the hearing to a time and date certain. Paula moved, seconded by David, that the matter be continued to Thursday, December 7 at 6:30 p.m. All in favor.

Joe Green made a closing summary which emphasized that the project as proposed will reduce stormwater runoff currently existing the property and be beneficial to the nearby river. And that the proposed expansion under the circumstances was a permissible change to an existing nonconforming structure because it did not increase the degree of noncompliance. Attorney Nordle also provided a short summary statement in support of the Application.

John Riley stated that if the Board, after deliberation, concluded it did not need to receive further evidence and could issue a decision, it would issue a written decision with findings, and the December 7 hearing would be cancelled.

At approximately 8:30 p.m. Erick Titrud moved that the Board enter into deliberative session to consider the application. Paula seconded. All approved. John Riley thanked those attending.

The Board then held a deliberative session from which it exited at 9:10 p.m. John Riley will prepare a decision in accordance with the members' discussion for their review and comment. There being no further business the meeting adjourned.

Decision

Findings

1. Moretown Holdings proposes to expand an existing single family residence known as the River House presently consisting of 1,840 square feet to 3,443 square feet. A portion of the expansion of approximately 1,000 square feet is to the east and west sides of the property and does not impact the 50 foot river setback. However, approximately 400-500 square feet would extend into the existing river setback in an area where there are terraces, descending steps, retaining walls and an "herb garden".

2. The herb garden as depicted on photos submitted by the Applicant is an existing vegetated area. The residential addition is proposed to extend into the steps, garden, terraces, and retaining wall areas replacing them with enclosed living space primarily consisting of a 20 x 20' master bedroom as shown on the proposed floor plan. This development would occur within the 50 foot "buffer strip" from the river described in Section 4.11(B). It would eliminate the existing herb garden vegetation. Section 4.11 states vegetation within the buffer strip should be left in an undisturbed state.

3. Section 4.11(C) creates an exception for enlargement of “any structure” in existence which does not comply with Subsection 4.11(B), if approved by the DRB in accordance with Section 4.8.

4. The Board concludes that the existing residence is a structure which presently complies with the setback requirement. The residence was built in 1967. The locations of the residential foundation, walls, and roof at present all comply with the 50 foot setback. The Applicant proposes to extend the residential structure into the 50 foot buffer strip in violation of the Ordinance.

5. Even if the Board were to accept Applicant’s reasoning that existing terraces, retaining walls, steps, and herb garden represent a pre-existing noncompliant structure, the proposed expansion is not permitted under Section 4.8.

6. 4.8(A) states in pertinent part that a lawful structure existing at the time of enactment of the regulations may be continued, although the structure does not conform with the provisions of the regulations, provided the conditions in the section are met.

7. Subsection (2) states a non-conforming structure 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 non-conformance shall not be increased.

8. This subsection would allow reconstruction, alteration, restoration or repair. Applicant is not seeking to maintain or repair the existing stone terraces and retaining walls. Rather it is proposing to dramatically and substantially expand what is presently within the buffer strip, and create a foundation, walls, and roof, with enclosed living space. This goes beyond mere restoration or repair and degree of non-conformance would be substantially increased as well.

9. Subsection (4) states a nonconforming structure shall not have its degree of non-compliance increased. Again, Applicant is proposing to substantially modify and change the existing “structure” within the buffer strip. The Board finds that replacing the retaining walls, stone terrace, steps, and herb garden, with a foundation, curtain drain, walls, roof and enclosed residential space would greatly increase the degree of non-compliance.

10. The Mad River is popular for canoeing and kayaking. The existing River House is somewhat setback with stone terraces and steps dropping down to the river. Applicants’ proposal would expand the residence into the buffer strip and make the residence more visually imposing upon individuals using the river.

11. Applicant proposes to also renovate the existing residence and extend it easterly and westerly in a manner which complies with the 50 foot river setback. The Board believes the residence can be improved and expanded in a manner that does not violate the 50 foot buffer strip requirement of the Ordinance.

12. The Board does not reach an analysis of whether Section 4.8(C) applies. The Applicant did not provide sufficient evidence as to whether the alteration might exceed an aggregate cost 35% of the current assessed value. More importantly, any addition or expansion to a building under the provision requires compliance with the regulations, including setback requirements. The expansion of the existing residential building would violate the 50 foot buffer strip requirement and so is not allowed under 4.8(6).

13. The present application seeks approval to expand the residential building envelope into the 50 foot buffer strip. It violates Section 4.11 as an expansion of an existing complying structure into a non-complying one. Even if the Board accepted the Applicant's position that it is simply seeking to alter an existing non-complying structure, application fails because the property's degree of non-conformance, and degree of non-compliance, would be increased.

For the foregoing reason, the request for conditional use approval is denied.

Moretown Development Review Board

Erick Titrud

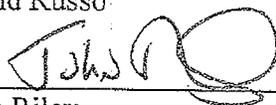
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John Riley

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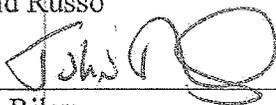
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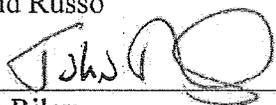
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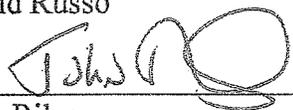
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