

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

Minutes for Hearing Held January 23, 2020

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

The meeting was called to order at 6:30 PM. Present for the Board were David Russo, Jim O'Neill, John Riley, Craig Oshkello, and Paula Woods. Present for the Applicant were Architect Joseph Green and Sam Thompson who identified herself as an agent for Applicant. Zoning Administrator, David Specht was also present.

The meeting began with David Specht summarizing the manner in which he analyzed the application. This was briefly paused to allow Joe Green to provide an overview of the Applicant's proposal.

Moretown Holdings owns an 8.8 acre parcel all of which lies on the river side of Lover's Lane. This Town road historically connected from Vermont Route 100B to U.S. Route 2 in Middlesex. Because the bridge over the Mad River from Route 100B side is in poor shape the road no longer runs through, and access to the property is solely from the U.S. Route 2 side.

Submitted in support of the Application was a Survey of the entire parcel prepared for the prior owner, Jonathan Larsen in 2015. Also a partial Site Plan, labeled A-1, and dated December 4, 2019. This Site Plan depicts the existing residence known as the "River House". There is also a second residence on the parcel shown on the Survey as the "Upper House" and sometimes referred to as the "Guest House".

Several Board members participated in a 2017 application of Moretown Holdings which proposed the River House be extended towards the Mad River. The application was denied on grounds the addition would encroach upon the river set back. Mr. Green indicated that following the denial, Moretown Holdings received approval from the Zoning Administrator for a renovation of River House which did not move it closer to the Mad River.

The present Application proposes installation of an accessory structure at the location of an historic 24 by 48 foot foundation where a hydroelectric facility existed many years ago. The Board accepted into evidence an old photo which showed the penstock and building which housed the hydroelectric turbine. Although the building is long gone, the

supports for the penstock still remain. The Board also accepted a photograph of the turbine building under construction, and a photo of the type of previously constructed building which the Applicant proposes to place on the foundation. It is of a so called "Prouve" design which dates from World War II France and presently is in storage. It is a single story structure having dimensions of approximately 19 by 29 feet.

The building would not have a bathroom, be insulated, or heated. It is contemplated electrical service would be accomplished through solar panels. It would be an accessory structure, used perhaps for yoga, or storing canoes/kayaks.

The Site Plan depicts a 3 foot wide access walkway which begins some distance from the existing River House at the driveway, includes fieldstone steps at two locations, and a 48 foot boardwalk which would be excavated out of existing ledge to reach the foundation location. The Application also contemplates the new structure would have a wraparound deck.

Although not apparent from the Application itself, the current intent is to anchor and elevate the structure on driven steel piles. After the application was warned David Specht sent additional materials consisting of an ANR Project Review Sheet completed January 13 and 16, 2020, and a January 3, 2020 letter of Ned Swanberg who is the Central Vermont Floodplain Manager for the Department of Environmental Conservation. Mr. Swanberg's letter was in the context of the Town requesting input of ANR under Ordinance Section 6.2(C)(3) and 24 V.S.A. §4424.

The Swanberg letter notes the location of the structure is within the Special Flood Hazard Area and mapped Floodway of the Mad River. It is also within the municipal setback of 50 feet from the top of the bank.

Based upon the representation that the lowest floor elevation of the new structure would be at an elevation of 464 feet, (which is approximately 10 feet above the flood level), with placement of the supporting piles within the historic stone foundation, Mr. Swanberg advised the piles would not create a new encroachment or barrier to the conveyance of flood discharges and would not increase flood elevations or velocities.

In considering the application the Zoning Administrator began with consideration of Section 4.11. Subsection (B) states land development shall be set back a minimum of fifty (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 was the case in the context of the 2017 application, because there is no discernible clear bank at the foundation location, Applicant utilized the elevation of the

river bank across the river to establish the “bank” at an elevation of 443.5 feet. The Site Plan then depicts the 50 foot setback on the Site Plan from this elevation. The front left corner of the historic foundation is shown to be extremely close to the river bank elevation, and the entire proposed accessory structure location lies within the 50 foot setback.

As noted by Mr. Green, the structure also encroaches significantly (and almost entirely) into the 65 foot front yard setback from the center line of Lover’s Lane applicable to the Agricultural-Residential District.

Section 4.11(C) 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 nonconformities.

Applicant’s argument is that the historic foundation for the long dismantled hydroelectric facility is a grandfathered pre-existing “structure” which can be expanded so long as it meets the criteria of Section 4.8. David Specht in his analysis focused on whether the foundation could be altered under 4.8(C), accepting the premise that the historic foundation qualifies as a “structure” under the Ordinance.

“Structure” is defined at Page 90 as “An assembly of materials for occupancy or use including, but not limited to, a building, mobile home or trailer, or swimming pool...” The definition continues with clarifications as to what the term means for flood plain management purposes, and for insurance purposes.

Joe Green described the foundation as constructed of stone and concrete and having a substantial depth. There was discussion and questions about whether the foundation should be considered an existing “structure” under the Ordinance, and whether this might mean other long abandoned foundations could be expanded as prior nonconforming structures.

David Specht having accepted the premise the foundation is a structure proceeded with an analysis of whether it could be altered under Section 4.8(C). The Section allows additions to a building or structure provided the alteration does not exceed in aggregate cost 35 percent for residential properties and 25 percent for industrial and commercial property of the “current assessed value as determined by the town assessor”. The Section continues that if an addition or expansion to a building or structure is proposed, the

addition or expansion itself must comply with the provisions of the regulations (e.g. setback requirements).

Included in the record were printouts from the Town's tax assessment records. Although there is a single property ID Number (02-058007) there are separate pages for the River House and the Upper/Guest House. David Specht could find no indication that any value had been attributed to the old foundation by the town listers. Because there would be costs to install and place the new building and steel piles on the foundation, this would exceed the 35% threshold, and so would not qualify under Section 4.8(C) under Dave's analysis.

Joe Green, on the other hand, contended the phrase "residential properties" in the section should be construed broadly to include the total value of the residential property which is approximately One Million Dollars. Under this analysis, the budget for placement of the simple one story building is well below the 35% cost threshold.

Craig Oshkello asked Mr. Green if he could provide an estimate of what it would cost to construct the historic foundation today. The question is relevant if one believes it appropriate to conduct the analysis by determining a valuation for the foundation, and then proceeding by asking whether placement of the new building would cost more than 35 percent of the existing value. Some discussion followed of appropriate costs for the various items.

Mr. Green pointed out that there is a woodshed and another outbuilding on the property which have value, are typically valued for assessment purposes, but are not presently included as part of the Town's property assessment.

There was discussion whether a site visit would be beneficial. One Board Member expressed interest, but there are practical difficulties scheduling and given existing snow cover. A majority of the Board concluded since all to be observed is an existing historic foundation, a site visit is not required.

The Chair requested a motion the Board enter deliberative session but not close the evidence. The rationale for not closing the evidence was that were the Board to decide in deliberative session it would be reasonable to analyze the application under Section 4.8(C) based on the value of the existing foundation, and the actual cost of erecting the proposed building, that it would need better evidence than the speculation provided at the hearing. In which case, after exiting deliberative session the Board could make a motion to that effect, and in the context provide notice to the Applicant of the information it believed is needed. With Mr. Green still present it was agreed that if the Board chose to

proceed in that manner February 20 at 6:30 PM was a continued hearing date and time which appeared to work for the Board and Applicant.

It was further stated that if the Board upon deliberation concluded it needed no further evidence, it would close the evidence, and information would be communicated to the Zoning Administrator by email the next day, to be communicated to Mr. Green as representative of the Applicant.

Paula made the motion to enter into deliberative session without closing the evidence, Jim O'Neill seconded. The motion was adopted.

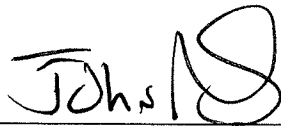
Mr. Green, Ms. Thompson and Mr. Specht left and the Board engaged in a deliberative session lasting approximately 40 minutes.

The Board exited deliberative session and Paula made a motion, seconded by Dave, that the Board would close the evidence. This motion was approved with one nay vote (Craig) on the ground it would be useful to have additional information as to the value of the foundation, and more specific information on the cost of accomplishing the proposed improvement.

The Board chair will develop a proposed decision for the Board's consideration consistent with the discussion and decisions reached in deliberative session which the Board will release separately.

Dated this 31st day of January, 2020.

Moretown Development Review Board



John Riley, Acting Clerk