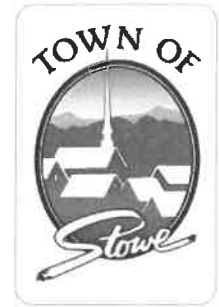


**TOWN OF STOWE**  
**DEVELOPMENT REVIEW BOARD**  
Findings of Fact & Conclusions of Law



**PROJECT:** 6350

**SUBJECT PROPERTY:** 3174 Mountain Road #11-198.010

**APPLICANT:**

Chris Bissell- Walden Heights Construction  
4704 VT Route 15  
West Danville, VT 05873

**PROPERTY OWNER:**

Jason Swift  
9 Cove Drive  
Newburyport, MA 01950

**APPLICATION:**

The Applicant, Chris Bissell- Walden Heights Construction (herein referred to as the "Applicant"), requests a setback waiver to construct a 13' x 20' attached carport extending the existing nonconforming single-family dwelling. As proposed, the project will be located entirely within the front and side setbacks. The Applicant seeks a setback waiver, as allowed under Section 3.4(8), decreasing the setback requirement by 20% to construct the proposed carport. The existing single-family dwelling was constructed in 1964 prior to the adoption of zoning or subdivision regulations and as such, is considered a non-conforming structure, as defined under the regulations. Nonconforming structures are regulated under Section 3.9 of the Town of Stowe Zoning Regulations and are eligible for setback waivers under Section 3.4(8)(C). The subject parcel was approved by the Stowe Planning Commission in 1986 under S-86-4. The application has been reviewed by the Development Review Board (DRB) for the purpose of a setback waiver under applicable standards of the Town of Stowe Zoning Regulations (as adopted on October 9, 2018). The Development Review Board's procedural history and relevant findings are attached.

**REVIEW PROCESS:**

*(Application materials, hearing notices, meeting minutes on file at the Stowe Town Office.)*

An application for a setback waiver was filed by Applicant Chris Bissell on July 13, 2020. The application was accepted as administratively complete by Town of Stowe Zoning Director Sarah McShane and referred to the Development Review Board for a public hearing. A public hearing of the DRB was scheduled for October 6, 2020 and warned by the Zoning Director in accordance with Section 2.14 of the regulations and 24 V.S.A. §4464. The hearing notice was published in the Stowe Reporter on September 17, 2020. The Applicant submitted a completed certificate of service in accordance with Section 2.14(1)(B).

The public hearing to consider the application convened on October 6, 2020 via virtual meeting hosted by Zoom, with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. Members who participated in the review included: F.Aumand III, D.Clymer, C.Walton, T.Hand, M.Diender, L.Wasserman, A.Volansky.

The following persons attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Applicant – Chris Bissell, 4704 VT Route 15, West Danville, VT 05873

The following materials were submitted in support of the application and entered into the hearing record:

1. Town of Stowe Development Application, dated 7/13/2020;
2. Hand drawn elevation labeling building height, no date;
3. Hand drawn site plans (2), no date;

The DRB adjourned the hearing that evening, following the submission of testimony and evidence, marking the start of the 45-day period for the issuance of written findings and a decision.

**FINDINGS OF FACT & CONCLUSIONS OF LAW:** The Applicant's request for a setback waiver was reviewed by the Development Review Board (DRB) for conformance with applicable requirements of the Town of Stowe Zoning Regulations (as adopted on October 9, 2018), including the following:

- Section 2- Administration and Enforcement
- Section 3- General Regulations
  - Section 3.4(8) Setback Waivers
- Section 4- Specific Use Standards
- Section 5- Zoning Districts
- Section 6- Uses, Dimensional Requirements and Density

During its review of the application, the Board made the following Findings of Fact:

1. **Zoning District.** The subject parcel is located within the Upper Mountain Road (UMR) Zoning District as shown on the Official Town of Stowe Zoning Map (as adopted on October 9, 2018).
2. **Lot Area, Lot Width.** The subject lot consists of ±1.15 acres. No changes to lot area or lot width are proposed under this application.
3. **Setbacks.** Setbacks in the UMR District are 50 ft front, 50 ft side, and 50 ft rear. The Applicant proposes to construct a 13' x 20' attached carport extending the existing nonconforming single-family dwelling. As proposed, the project will be located entirely within the front and side setbacks.

Section 3.9(2) addresses expansions to nonconforming structures as follows:

- Nonconforming Structures. Any preexisting structure or part thereof which is not in compliance with the provisions of these regulations concerning density, setbacks, height, lot size, or other dimensional requirements, or which does not meet other applicable requirements of these regulations, shall be deemed a non-complying structure. Non-complying structures legally in existence on the effective date of these regulations may be allowed to continue indefinitely, but shall be subject to the provisions listed in Section 3.9(2)(A-E).
- The existing single-family dwelling was constructed in 1964 prior to the adoption of zoning or subdivision regulations and as such, is considered a non-complying structure, as defined under the regulations.
- The Applicant proposes a 13' x 20' attached carport expanding the existing nonconforming dwelling.
- Section 3.9(2)(B) allows for expansions of nonconforming structures as follows:

*A nonconforming structure that does not comply with established setback requirements may be altered, enlarged, relocated and/or replaced with a new structure or structures in a manner which does not achieve full compliance with the setback requirements of these regulations providing the degree of non-compliance is not increased except as provided below and no other setback requirements are infringed upon. In no case shall the length of cumulative total of all proposed and future expansions or alterations exceed 50% of the length of the existing nonconforming portion of the structure at the time the structure became nonconforming.*

- As proposed, the carport will not increase the degree of nonconformance on the required side setback but will increase the degree of nonconformance on the front setback. As shown on the provided site plan, the closest part of the carport will be approximately 45' as measured from the front property line.
- Section 3.4(8) grants the authority for the Development Review Board to grant a waiver from setback requirements under the following circumstances:

*A. Fire safety, disability accessibility, or other building code requirements cannot be reasonably satisfied without a waiver or;*

*B. Energy conservation and renewable energy structures cannot be reasonably developed without a waiver or;*

*C. The waiver is necessary to allow for reasonable expansions of existing uses given the configuration of development on the parcel prior to December 31, 1975, irregular lot configuration, or restrictions of existing topography.*

The Applicant requests a setback waiver under Section 3.4(8) for a reasonable expansion given the configuration of development on the parcel prior to December 31, 1975. As noted above, the existing dwelling was constructed in 1964 prior to the town's adoption of zoning regulations. The Applicant proposes a 16' x 20' carport off the front of the existing dwelling maintaining the same roofplane. The proposed carport is a roofed structure with no walls and two (2) support posts.

In all cases, the waiver shall meet all of the following criteria:

*A. The proposed development shall not adversely impact the overall character of the surrounding area or neighborhood.*

*B. The proposed development is compatible in scale and design with the surrounding area.*

*C. The proposed waiver shall not exceed 20% of any setback requirement.*

*D. The proposed development would not impinge upon sight distances on public and private roads.*

*E. The proposed development would not adversely impact the use of the adjacent parcel.*

The proposed carport will provide a covered area for parking of an automobile, storage, etc. The property is located off Mountain Road among other similarly sized parcels containing single-family dwellings. The proposed carport is not expected to adversely impact the overall character of the surrounding area or neighborhood.

The proposed carport is an open roof structure with no walls and two (2) support posts. It will extend the existing roofplane and is proposed to have standing seam metal roofing to match the dwelling.

The required setbacks in the UMR district are 50' (front/sides/rear). As shown on the provided site plan, the closest part of the carport will be approximately 45' as measured from the front property line. Section 3.4(C) allows a setback waiver not to exceed 20%. In the UMR district, the regulations allow for a 10' setback waiver (40' from the property line). The requested waiver does not exceed the allowed 20% setback waiver.

The parcel is located off Mountain Road and is served by a private shared driveway. The proposed carport is located on the interior of the parcel and will not impinge upon sight distances on public or private roads.

The proposed carport is located 45' from the adjacent parcel and will have no impact on the use of the adjacent parcel. The adjacent parcel contains a single-family dwelling and apartment.

The lot contains existing mature landscaping and trees.

4. **Maximum Building Coverage.** The maximum building coverage in the UMR district is 8%. Under Section 16.22, building coverage is defined as *"16.22 Building Coverage: That portion of a site, expressed as a percentage, occupied by all buildings or structures, (not including public utility structures), that are roofed or otherwise covered and that extend more than three (3') feet above the surface ground level. The building roof overhang up to 6 feet in length is not included as part of the building coverage area."* The existing building coverage totals 4.2% (approximately 2140 sf). The Applicant proposes to construct a 16' x 20' carport increasing the building coverage by 260 sf. The proposed building coverage is 4.7%.
5. **Building Height.** The maximum building height in UMR is 28' feet. The regulations define building height as the *"Vertical distance measured from the average elevation of the proposed finished grade at the front or rear of the building to the highest point of the roof for flat and mansard roofs, and to the average height between the highest ridge and its contiguous eave for other types of roofs. On sloping sites the height will be measured on the uphill side."* The proposed carport has an overall height of 12'.

**Conclusion:** Based upon the above findings, the Board concludes the proposal meets the waiver criterion as outlined in Section 3.4(8) and grants approval for the requested setback waiver.

**DECISION**

On a motion by T.Hand, seconded by M. Diender, the Development Review Board hereby approves (7-0) Project 6350 as presented in application dated 7/13/2020 and supporting materials, subject to the following conditions of approval:

1. This project shall be completed according to the plans hereby approved. Any change to the plans or the proposed use of the property shall be brought to the Zoning Administrator’s attention, prior to its enactment, for a determination if an amendment is required. The Zoning Administrator is granted the authority to review and administratively approve non-material modifications to the approved plans upon finding that the proposed change or alteration would not have affected the decision made or any conditions if had been included in the plans as approved.
2. All relevant prior conditions of approval, unless amended herein, remain in full force and effect.
3. A certificate of occupancy must be obtained from the Zoning Administrator following the construction but prior to occupancy and use to ensure that it has been constructed as approved by the Development Review Board, as required under Section 2.10 of the zoning regulations.
4. These conditions of approval shall run with the land and are binding upon and enforceable against the permittee and his successors. By acceptance of a permit, the permittee agrees to allow authorized representatives of the Town of Stowe to access the property subject to this approval, at reasonable times, for purposes of ascertaining compliance with the conditions of approval.

Voting favor: F.Aumand III, D.Clymer, C.Walton, T.Hand, M.Diender, L.Wasserman, A.Volansky.

Voting to deny: None

Abstain: None

Dated at Stowe, Vermont this the 23 day of October 2020

By:   
Drew Clymer, Chair

**NOTICES:**

1. In accordance with 24 V.S.A. § 4449(e), applicants are hereby notified that state permits also may be required prior to land subdivision or construction. The applicant should contact the DEC Permit Specialist for District #5 (802-505-5367) to determine whether state permits are required.
2. The applicant or another interested person may request reconsideration of this decision by the Development Review Board, including associated findings and conditions, within 30 days of the date of this decision by filing a notice of appeal that specifies the basis for the request with the Secretary of the Development Board. Pursuant to 24 V.S.A. § 4470, the board may reject the request within 10 days of the date of filing if it determines that the issues raised on appeal have already been decided or involve substantially or materially the same facts by or on behalf of the appellant.
3. This decision may also be appealed to the Environmental Division of the Vermont Superior Court by the applicant or another 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 Division Court Proceedings.
4. In accordance with 24 V.S.A. § 4455, on petition by the municipality and after notice and opportunity for hearing, the Environmental Division may revoke a permit based on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.

