

TOWN OF CORNWALL
2629 Route 30, Cornwall, VT 05753

Development Review Board
FINDINGS AND DECISION

In re: Toder Dimensional Waiver Hearing Application No.: drb#21-004

I. INTRODUCTION AND PROCEDURAL HISTORY:

1. This proceeding involves review under the *Town of Cornwall Zoning Regulations* (CZR) of an Application for Waiver submitted by David Toder, RA, BOLDER Architecture, PLLC, of Highland, NY, seeking a waiver to permit the replacement of a balcony and ladder egress with a new stair, on the north side of the dwelling on the property at 39 Lemon Fair Road, owned by Elizabeth Toder. The relevant Zoning provisions are *§250 Medium Density Residential Zoning District (MDR)*, *§543 Projection in Yards*, *§410 Nonconformities*, and *§§350–358 Conditional Use Review*.
2. The Application and supporting documents were received by the Development Review Board (DRB) on September 12, 2021. A copy of the Application is available at the Cornwall Town Clerk's Office.
3. On September 16, 2021, notice of a public hearing to be held on October 6, 2021, for review of the Application, was published in the *Addison Independent*.
4. Notice of a public hearing for review of the Application was posted at the following places:
 - a) The Town Clerk's Office.
 - b) The Town Garage
 - c) The Town website
 - d) The property in question
5. The Application was considered by the DRB at a public hearing held virtually on October 6, 2021. The hearing was closed October 6, 2021. The DRB reviewed the Application under the *Town of Cornwall Zoning Regulations*, dated February 26, 2008.
6. Present at the hearing(s) were the following members of the DRB:
 - Barbara Greenwood (DRB Chair)
 - David Anderson (Vice-Chair)
 - Shari Johnson
 - Cheryl Cesario
 - Ellen Whelan-Wuest

7. At the outset of the hearing, the DRB Chair read aloud the Hearing Notice as published. The Chair then read aloud the statutory definition of “interested person,” and afforded those attendees wishing to claim status as an interested person under 24 V.S.A. §4465(b) the opportunity to sign in and to provide a USPS mailing address at which to receive materials. A record of the name and address of attendees and a record of their participation at the hearing is available at the Town Clerk’s Office. Those persons wishing to participate were duly sworn in.

II. EVIDENCE AND RELEVANT TESTIMONIES:

During the hearing the following Exhibits were submitted to the DRB, accepted into evidence, and marked as shown:

- Exhibit 1**—Warning (which was posted in a timely fashion at the Town Hall and Town Garage, on the Town website, and on the property)
- Exhibit 2**—Copy of electronic tear sheet showing that the warning was published in the *Addison Independent*, September 16, 2021
- Exhibit 3**—Proof of service—list of abutting property owners, certified mail receipts, and copy of notice of hearing (warning) sent to abutting property owners
- Exhibit 4**—Application form, filed electronically with the ZA September 10, 2021, and filed in hard copy with the ZA and declared complete September 11, 2021
- Exhibit 5**—Some of the materials filed with application—Narrative entitled “Egress Stair at 39 Lemon Fair Road”; copy of §§540–543 from *Zoning Regulations*; Warranty Deed, tax map, and list of property owners adjacent to 39 Lemon Fair Road; and copy of excerpt from unsigned Survey Plat dated June 18, 2001.
- Exhibits 6a, 6b, 6c**—Set of 3 drawings filed with application—
 6a—L01 Site Plan,
 6b—A01 Floor Plans,
 6c—A02 Elevations
- Exhibit 7**—Narrative filed September 12, 2021 entitled “Egress stair to road centerline”
- Exhibit 8**—Cornwall Conservation Commission’s review of application, dated September 20, 2021, indicating it has no concerns

These exhibits are available at the Town Clerk’s Office. Also at the Town Office are the Hearing Minutes with details of the full testimonies heard (Ref: *DRB Minutes October 6, 2021*). Only those testimonies relevant to the specific subject of the application before the DRB are shown below:

1. The property (ID #05-01-3) is a corner lot at the intersection of Lemon Fair Road and Route 125. It is in the MDR which has the following front yard setback required: 100’ (on each road).
2. The 13±-acre property has warranty deeds recorded in the Cornwall Land Records in Book 57 pages 562 & 565, and Book 42 page 430.
3. David Toder, on behalf of Elizabeth Toder, explained the proposed project for the property at 39 Lemon Fair Road, Cornwall, Vermont, and the waiver being requested:

- **The property's primary dwelling** was built c. 1805 and lies completely within the front setbacks, being approximately 8.5'–9' from the front property line along each road and 34' ± from the centerline of Lemon Fair Road.
- **Proposed Plan**
 - Owner wishes to replace the existing, unsafe egress from the third floor with a safer fire/emergency escape route.
 - The new egress structure (stair) will be on the North side of the house and is proposed to have its north edge on the property line adjacent to Lemon Fair Road.
 - The egress structure is planned to be reasonably open and painted to match the house. It will be located between the house and a large tree to minimize the aesthetic impact of the new structure.
- **The Applicant requests a waiver** to allow the construction of the egress structure within the Lemon Fair Road front yard setback.
 - The house is situated 34 feet ± from the centerline. The new structure will extend 9' ± from the North wall of the house to the property line along Lemon Fair Road, thus reducing the setback of the structure from the centerline from 34'± to 25'±.

4. DRB Questions

- Is there an alternate location for this structure that would not contribute to the non-conformity of the home? Mr. Toder explained that the south end of the house could be possible but would be more complex and awkward because there is a roof below (not a clear drop to the ground).
- Will there be any work needed on the tree to accommodate the stair? Mr. Toder explained that there will be no trimming needed and the tree will not impact fire safety.
- Are there plans for any other use of the stair structure, is it to be exclusively for fire safety (e.g. chair/table on balcony for sitting outside)? Mr. Toder explained that the structure will be strictly for fire safety and is not large enough for other use, being a little more than 3 feet wide by 4 feet deep. There has been some discussion about turning the third floor into an apartment, but that is a separate issue with separate permitting involved.
- What will be required for maintenance against snow and ice in the winter to maintain the fire safety of the stairs and egress structure? Mr. Toder explained that the open-grid treads and landings will help dissipate any potential accumulations. Additionally, the owner will have to do basic maintenance with minimal de-icing using shovel and salt/ice-melt granules.
- How much of the existing roofline will cover the new stairs and egress structure? Mr. Toder explained that the existing house roof has about a 12"–16" overhang. The structure will be roughly 6" from the house wall to allow for painting, etc.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Based on the Application, the Exhibits, and the testimony presented at the public hearing held on this Application, the DRB hereby finds, concludes and orders as follows:

FINDINGS OF FACT:

1. The Applicant is BOLDER Architecture, PLLC. The owner of the property is Elizabeth Toder who currently lives in Virginia. The application was filed by Elizabeth's brother David Toder, RA, of BOLDER Architecture, PLLC.
2. The subject property is located at 39 Lemon Fair Road in the Town of Cornwall, in the Medium Density Residential zoning district (MDR).
3. The dwelling has a third floor with 2 bedrooms and an exterior egress that is unsafe. The applicant seeks to replace this egress with a safer stairway that will be compliant with applicable Code requirements.
4. The dwelling predates the current Town of Cornwall zoning regulations and lies totally within the front yard setback area. As such, the dwelling is a non-conforming structure.
5. The new egress stair will extend from the north wall of the house into the front yard setback area between the house and the Lemon Fair Road centerline by 9'± (thus decreasing the setback from ±34' to ±25').
6. The new egress stairs will be tucked behind a large existing tree and fit between the house windows for best aesthetics. The stairs will be an open frame design for least visual mass. They will be painted to match the house and will have no roof or covering over them.

CONCLUSIONS OF LAW:

1. **Authority** - The DRB has authority pursuant to State Statute and the Town's Zoning Regulations §332 (4) and (6) to hear, approve, or deny applications for expansions of non-conforming structures and waiver applications.
2. **Non-Conformities and Conditional Use Review.** - This waiver application concerns a non-conforming structure (i.e., the dwelling). Under §410(1) a non-conforming structure cannot be enlarged, extended, reconstructed or otherwise altered without approval by the DRB, after a public hearing carried out pursuant to the provisions governing conditional use review, and only if in the opinion of the DRB the alteration does not enlarge the nature of the non-conformance.

The DRB concludes that the proposed project plan does not result in any undue impact or have any adverse effect on the conditional use criteria as defined in CZR§355 and §356. For example, it will not have an adverse effect on the character of the area, given that the design and use will increase the safety of the dwelling, and the stair will be painted the same color

as the home, will be tucked behind a large existing tree, and will otherwise be in line with the design and aesthetic of the home.

In the opinion of the DRB, the nonconformance of the dwelling will not be increased by the new egress stairs. This is because of CZR §543 which allows for steps to extend into a yard so long as they are not covered by a roof or awning.

3. **Waiver**—The DRB concludes that the proposal will meet all of the criteria for a waiver listed under §383, for the following reasons: it is for a by right use in the MDR (a one-family or two-family dwelling), it is in conformance with the Town plan, it is designed to conform with the character of the land use area and is reasonably designed to limit impact on neighbors, and it will increase the fire safety of the home.

IV. **DECISION:**

Based upon these Findings of Fact, Conclusions of Law, and the evidence presented in the form of exhibits and testimony at the hearing, the Development Review Board hereby grants approval of the Waiver requested in the Application (#*drb21-004*) submitted by BOLDER Architecture, PLLC on behalf of Elizabeth Toder, dated September 9, 2021.

Dated at Cornwall, Vermont, this 4th day of November, 2021.

Paula A. Green (500)
Chair, DRB

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) 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 Court Proceedings*.