

Town of Bolton
Development Review
Board

3045 Theodore Roosevelt Highway
Bolton VT 05676
802-434-5075

In re: **Chris Haggerty/Michael & Brenda McKeown**
Access Approval
May 19, 2006

FINDINGS AND DECISION

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves the review of an application by Chris Haggerty, Agent/Applicant and Michael and Brenda McKeown, Landowners, for approval under Section 3.2(B) of the Bolton Land Use and Development Regulations, of a proposed 20-foot right-of-way to access a pre-existing lot that lacks frontage on a public road or public waters. The lot in question is located in the Rural I (R1) Zoning District, 191 Black Fly Hill, Tax Map Parcel ID# 4030191.
2. A pre-application sketch plan review was held during the March 15, 2006 meeting of the Development Review Board (DRB). A letter of determination was issued by the DRB on April 10, 2006 indicating that, if the applicants decided to apply for a boundary adjustment, rather than a subdivision of land as initially proposed:
 - The boundary (lot line) adjustment could not result in the creation of a new lot or a lot that would increase the degree of nonconformance. No further subdivision review would be required for a boundary adjustment under Section 6.1(B)(3) of the Bolton Land Use & Development Regulations.
 - DRB access approval under Section 3.2(B) would be required since the existing lot lacks the road frontage required for lots within the RI district (200 feet).
3. The application for a boundary adjustment and access approval was received at the Bolton Town Office on April 5, 2006. A copy of the application is available at the Bolton Town Office.
4. On Tuesday, April 11, 2006, notice of a public hearing for access approval was published in the Burlington Free Press.
5. On April 7, 2006, notice of a public hearing for access approval was posted at the following places:
 - a. The Bolton Town Office
 - b. McKeown property, within view of the Stage Road, the public-right-of-way most adjacent to the property for which the application was made
 - c. The Bolton Store
 - d. The Jonesville Post Office
 - e. Smilie Memorial School.

6. On Saturday, April 8, 2006, a copy of the notice of a public hearing was mailed to the applicant. On Saturday, April 8, 2006, a copy of the notice of public hearing was mailed to the six owners (names and addresses provided by Chris Haggerty, Applicant) of properties adjoining the property subject to the application.
7. The application and plat were considered by the Development Review Board at a final public hearing on Wednesday, April 26, 2006. The Development Review Board reviewed the application and plat under the Bolton Land Use & Development Regulations, as adopted January 5, 2005 (effective date January 26, 2005).
8. Present at the hearing were the following members of the Development Review Board, representing a quorum of the board:
 - Sharon Murray, Chair
 - Margot Pender
 - Jerry Chabot
 - Michael Hauser, Alternate
 - Rob Heimbuch, Alternate

DRB member Mike Rainville recused himself from the proceedings and left the table.

9. At the outset of the hearing, Development Review Board afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. §4465(b) to demonstrate that the criteria set forth in that statute could be met. It was determined for the record that Chris Haggerty, as agent/applicant, and Michael and Brenda McKeown as landowners, met the criteria for interested person status and retained the right to appeal any decision of the DRB under these proceedings. No other person requested interested person status or otherwise participated in these proceedings. All testimony was presented under oath, as administered by the Chair.
10. During the course of the hearing the following exhibits were submitted to the Development Review Board, which are on file and available at the Bolton Town Office:
 - The application form, dated 4/5/06, and abutter list.
 - Boundary Line Adjustment Plat (Sheet 1 of 1) prepared by Leonard H. Amblo (No. 695) of Burton Professional Land Surveyors PC, dated 3/19/06, including a location plan (inset) and plat showing the adjusted lot line between “Parcel 1” and “Parcel 2,” and the proposed access from Black Fly Hill to Parcel 2.
 - Boundary Line Adjustment Overall Site Plan (Sheet 1 of 3), prepared by Christopher A. Haggerty (No. 455) of Burton Professional Land Surveyors PC, dated 4/3/06, that shows the proposed boundary (lot line) adjustment between Lot #1 (to be retained) and Lot#2 (to be transferred for the development of a single family home), and the proposed access to Lot #2.
 - “Design Data” (Sheet 2 of 3), prepared by the above and dated 4/2/06, including a partial site plan of Lot #2 that shows site characteristics in more detail and the locations of the proposed house site, access drive, and water and wastewater systems

- in relation to slopes (elevation contours, breaks in slope), vegetative cover, lot lines, surface waters, and related setback areas.
- Details and Specifications (Sheet 3 of 3), prepared by the above and dated 4/3/06, showing the details of septic system design.

11. Access approval by the Development Review Board was requested for the project pursuant to review under the following sections of the Bolton Land Use & Development Regulations:

- Article III, Section 3.2 (Access & Driveways)

It was determined by the Board that the application was sufficiently complete to make findings under applicable regulations. The applicant will also be required to obtain a zoning permit for the boundary adjustment in accordance with Section 6.1(B) of the regulations.

12. The hearing was adjourned on April 26, 2006, requiring the issuance of a decision by the Development Review Board by June 9th, 2006 in order to meet the 45-day statutory requirement. The Board voted to enter deliberative session on April 26th, 2006, pending the issuance of this written decision.

FINDINGS

Based on the application, testimony, exhibits, and other evidence submitted the Development Review Board makes the following findings:

1. The applicant seeks approval to access a pre-existing nonconforming parcel, to be modified by a boundary adjustment, for the purposes of constructing a single family home, to include the relocation and expansion of an existing cabin located on the property.
2. The subject parcel, Lot #2, is a pre-existing 15.8 acre parcel that lacks frontage on a public road. As adjusted, Lot #2 would be reduced to 8.0 acres and, except for the frontage requirement, would continue to conform to R1 district dimensional standards, including minimum lot size and setback requirements.
3. The proposed access is from Black Fly Hill, an existing private, gravel road with a 50-foot right-of-way that intersects Stage Road. The proposed access and utility easement, as shown on the site plan and plat, consists of the extension of an existing 20-foot right-of-way from Black Fly Hill that crosses the McKeown and adjoining Lawrence properties and serves the existing house on Lot #1. An easement for a triangular turnaround, as shown on the plan and plat, will be obtained from Lawrence to facilitate access to both lots. The access to Lot #2 will consist of a 20-foot right-of-way that extends approximately ~2,520 feet from the turnaround area, and crosses Lots #1 and #2, to access the proposed house site. The proposed access will accommodate a 12-foot-wide gravel driveway and utilities. Because of the length of the driveway, an additional pull-off area will be installed at the site where the cabin is currently located. The finished grade of the driveway will not exceed a slope of 9%.

DECISION AND CONDITIONS

Based upon these findings, and subject to the conditions set forth below, the Development Review Board votes (5–0) to grant the application for access approval.

Members voting in favor: Sharon Murray, Jerry Chabot, Margot Pender, Michael Hauser (Alternate), Rob Heimbuch (Alternate)

Recused: Mike Rainville (did not participate or vote).

We find that the proposed subdivision meets applicable requirements of the Bolton Land Use & Development Regulations, including the following under Article III (General Regulations):

- Section 3.2(A) (Frontage) – the subject lot, Lot #2, is a pre-existing, nonconforming lot that predates Bolton’s Land Use and Subdivision Regulations, and lacks required frontage on a public road or public waters. The proposed lot line adjustment will not create a new lot, nor increase the degree of nonconformance of the existing lot under regulations currently in effect. The proposed access meets the statutory requirement for access to such parcels, by a permanent easement or right-of-way at least 20 feet in width, subject to DRB approval under Section 3.2(B).
- Section 3.1(B) (Nonfrontage Lots). In accordance with this section of the regulations, the DRB finds that the access, as designed, will adequately and safely serve the intended use of the parcel for the construction of a single family dwelling. No further subdivision or development is proposed.
- Section 3.2(E) (Driveways). The proposed access meets driveway design requirements under the regulations, including applicable B-71 standards, slope limitations, and requirements for pull-off and turnaround areas. A portion of the access will be shared with one other existing residence. Legal easements that protect the interests of all parties shall be obtained from affected landowners, including the Lawrence’s and the McKeown’s.

The Development Review Board approves the proposed access as shown on the site plan and boundary adjustment plat, subject to the following conditions:

1. Access approval is contingent upon the applicant obtaining zoning permits for the proposed boundary adjustment and the relocation and expansion of the cabin for use as a single family dwelling in accordance with Sections 6.1 and 9.3 of the Bolton Land Use and Development Regulations. The boundary adjustment shall be surveyed and recorded in the town land records. Property deeds and right-of-way easements shall be submitted to the Bolton Town Clerk’s Office for recording in the town land records within 30 days of the date of issuance of zoning permits by the Administrative Officer. The deed must include a statement that no new lots have been created by this transaction.

2. In accordance with Section 3.2(B) the following conditions shall apply to the access to Lot #2 as approved:
 - a. The driveway, pull-off and turn-around areas shall be installed in locations shown on the site plan and boundary adjustment plats as submitted.
 - b. Existing and subsequent owners of the property shall have the responsibility to maintain the right-of-way, including the driveway, pull-off and turn around areas, for year-round access by emergency vehicles.
 - c. The town shall not provide school bussing beyond maintained public rights-of-way that serve the property (Stage Road).
 - d. Use of the property is limited to one principal use or structure (a single family dwelling), and associated accessory uses and structures allowed within the R1 District.

3. A certificate of occupancy for the dwelling shall not be issued by the Administrative Officer under Section 9.4 of the regulations until it has been confirmed that:
 - a. All required plats, deeds and easements have been recorded in the town land records.
 - b. The access has been installed as approved.
 - c. The applicant provides certification from a professional engineer or site technician licensed by the state that the wastewater has been installed as approved by the town and/or state.
 - d. All other applicable permits and approvals have been obtained.

Dated at Bolton Vermont, this 19th day of May, 2006.

Sharon Murray, Chair Bolton Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceedings 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.