



# Town of Bolton

## Development Review Board

Bolton Town Office  
3045 Theodore Roosevelt Highway  
Waterbury, VT 05676  
802-434-5075

Mark and Jenifer Andrews | Anne Finlayson  
Final Subdivision Approval – Boundary Adjustment  
Application #2014-17-SD  
July 9, 2014

### Applicants

Mark and Jenifer Andrews	Anne C. Finlayson
108 York Road	107 York Road
Jericho, VT 05465	Jericho, VT 05465

### Application

(Application materials on file at the Bolton Town Office)

The applicants, Mark and Jenifer Andrews and Anne Finlayson, have requested final subdivision review and approval for a boundary line adjustment between their two properties, amending a previously approved subdivision plat as recorded in the Town of Bolton Land Records on July 25, 1995.

The Andrews own an existing 18.86-acre parcel (ID# 1-70108) which is bordered to the south by a 24.43-acre parcel owned by Ms. Finlayson (ID# 1-70107). Both parcels are located almost entirely within the Rural I District, but extend into the Rural II district on their eastern borders, and are accessed via a shared 50-footwide right-of-way and gravel driveway extending from the terminus of York Road. There are existing single family dwellings on both lots, which are otherwise largely wooded. There are also steep and very steep slopes, unnamed streams and cultural landscape features on both properties, but not in the vicinity of the proposed boundary adjustment. No change in the existing access to either parcel, or any additional development, is proposed.

The requested boundary adjustment is based on a resurvey of both properties, and is intended to increase the setback distance from their shared boundary line to the Andrews' house and deck, thereby eliminating an existing nonconformity, and to provide additional yard space in front of the house. Under the proposed adjustment, 0.25 acres of land (10,787 sq. ft.) would be conveyed from the Finlayson property to the Andrews property, to include a portion of the driveway serving the Andrews property. A small shed located on the new line would be relocated. As surveyed, the acreage of the Andrews property would increase from 18.86 acres to 19.11 acres, while the acreage of the Finlayson property would decrease from 24.43 acres to 24.18 acres, as shown on the draft subdivision plat.

This application has been reviewed by the Bolton Development Review Board as a minor subdivision amendment under applicable zoning district (Article II), general (Article III) and subdivision standards (Article 7) of the Bolton Land Use and Development Regulations as amended through July 19, 2010 and in effect at the time of application. There are no previous conditions of subdivision approval attached to either parcel. The DRB's procedural history and relevant findings are attached.

### Decision –Final Subdivision Approval/Boundary Adjustment

- Denied
- Approved
- Approved with Conditions:

The Bolton Development Review Board hereby approves the requested boundary adjustment between the Andrews parcel (ID# 1-70108) and the Finlayson parcel (ID# 1-70107) as shown on the draft survey plat entitled "Plat of Boundary Line Adjustment Survey between Lands of Mark and Jenifer Andrews and Anne Finlayson," dated May 27, 2014, as prepared by Chris Haggerty (License No. 741) of Button Professional Land Surveyors LLC, subject to the following conditions of final subdivision approval:

1. The subdivision plat to be recorded in the land records of the Town of Bolton shall show and include the following information, in addition to that shown on the draft subdivision plat:
  - a. Corrections as noted by the surveyor, to include the correct spelling of Ms. Finlayson's name, and the correct acreage to be conveyed as stated in the "Town of Bolton Boundary Line Adjustment" text box. In addition, both lots on the draft survey plat are identified as "Lot 2." For purposes of recording, the Andrews' lot to the north should be relabeled "Lot 1" on the final plat.
  - b. Zoning district boundaries and required minimum setback distances from all property lines, including the shared property line between the two parcels, as adjusted.
  - c. A plat notation that approval from the Bolton Development Review Board shall be required for any development within setback areas from property lines and surface waters, as required under the Bolton Land Use and Development Regulations in effect at the time of application.
  - d. A plat notation that development is prohibited on slopes in excess of 25%, and that approval from the Bolton Development Review Board is required for development on slopes of 15% or more.
2. The subdivision plat, as approved by the DRB, shall be submitted for recording in the land records of the Town of Bolton within 180 days of the date of this approval, or the approval shall expire and reapplication for final subdivision approval shall be required. The applicant shall file the Mylar plat, signed by the Chair or other authorized representative of the Development Review Board, with the Bolton Town Clerk in accordance with the requirements of 27 V.S.A. Chapter 17, and provide two paper copies and one digital copy of the recorded plat, and one copy of all supporting documentation to the Zoning Administrator (see Section 6.6 of the regulations). The survey plat as recorded shall carry the following endorsement (Section 6.6):

*Approved by the Development Review Board of the Town of Bolton, Vermont, on the \_\_ day of July 2014, subject to all requirements and conditions of subdivision approval. Signed this \_\_ day of \_\_, 2014, by \_\_\_\_\_, DRB Chair.*
3. No changes, modifications or other revisions that alter the subdivision as approved, including the location of subdivision boundaries, lot lines, easements, or conditions of subdivision approval, shall be made without prior approval from the DRB. Any changes, modifications or revisions recorded without DRB approval shall be considered null and void.
4. The existing shed located on the adjusted property boundary, to be relocated as indicated on the draft subdivision plat, shall be sited to meet or exceed the required minimum setback distance from the property line as adjusted.
5. Minimum setback distances and undisturbed, vegetated buffer areas shall be maintained along streams located on each property in accordance with Section 3.17 of the Bolton Land Use and Development Regulations.

6. Future development on either lot is prohibited on slopes in excess of 25%. Approval from the Bolton Development Review Board is required for any development on slopes of 15% or more in accordance with Section 3.16 of the Bolton Land Use and Development Regulations.
7. All other required state and municipal permits and approvals must be obtained prior to recording the subdivision plat in the land records of the Town of Bolton.
8. The conditions of this subdivision approval are binding upon and enforceable against the applicants as permittee and their successors. By acceptance of this approval, the permittees agree to allow authorized representatives of the Town of Bolton to access the property subject to this approval, at reasonable times, for purposes of ascertaining compliance with the conditions of approval.

**Approved with conditions (5-0) by the Bolton Development Review Board:**

Charmaine Godin – Yea  
Sharon Murray – Yea  
Michael Rainville – Yea

John Devine, Alternate – Yea  
Stephen Diglio, Alternate – Yea

**Dated at Bolton, Vermont this 9<sup>th</sup>, day of July, 2014.**

**For the Development Review Board:**



Michael Rainville, 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 #4 (802-879-5676) 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 this permit based on a determination that the permittee violated the terms of the permit or obtained the permit based on misrepresentation of material fact.

## **Review Process**

(Application materials, hearing notices, meeting minutes on file at the Bolton Town Office)

**Final Subdivision Review.** A complete application for final subdivision review for the requested boundary adjustment, dated June 5, 2014, was referred to the DRB by the Zoning Administrator the same day. A public hearing was scheduled for June 24, 2014, and warned in accordance with Section 9.8 of the Bolton Land Use & Development Regulations (BLUDRs), and 24 V.S.A. § 4464.

The public hearing to consider the application was convened on June 24, 2013, 6:30 pm at the Bolton Town Office with a quorum of the DRB present and two alternates participating. Jen Andrews, applicant, did not attend or participate in the hearing process as a member of the DRB. No other conflicts of interest or ex parte communications were noted. The following persons attended and participated in the hearing process and may be afforded status as interested persons with rights to appeal this decision:

- Mark and Jenifer Andrews, Applicants  
108 York Road, Jericho, VT 05465
- Anne C. Finlayson, Applicant  
107 York Road, Jericho. VT 05465
- Christopher Haggerty, Button Professional Land Surveyors, PC, representing the applicants  
20 Kimball Avenue, South Burlington, VT 05403

In addition to the application form, the following materials were submitted in support of the application:

1. Exhibit 1: Copy of the Bolton Tax Map showing the locations of the Andrews and Finlayson parcels in relation to adjoining properties and R1 and R2 Zoning District boundaries.
2. Exhibit 2: Original survey plat, "Land of Mark and Jenifer Andrews and Virginia Reeves, York Road, Bolton Vermont" prepared by Tammy Bass, Licensed Surveyor, dated June 1995, as recorded in the land records of the town on July 25, 1995.
3. Exhibit 3: "Plat of Boundary Line Adjustment Survey between Lands of Mark and Jenifer Andrews and Anne Finlayson," prepared by Christopher Haggerty, Licensed Surveyor (No. 741), Button Professional Land Surveyors, PC, dated May 25, 2014.

The Bolton DRB also referenced the Bolton Resource Map, posted at the Town Office, during the hearing process and in its subsequent deliberations.

The public hearing was adjourned that evening, initiating the 45-day period for the issuance of a written DRB decision.

## **Findings & Conclusions**

The applicants' request for subdivision approval for the proposed boundary adjustment has been reviewed by the Bolton Development Review Board (DRB) for conformance with applicable subdivision review standards under the Bolton Land Use and Development Regulations (BLUDR) in effect at the time of application. DRB findings and conclusions under each of these standards are presented as follows.

### **Section 7.2 General Standards**

**Conclusion:** Based on the following findings, the proposed boundary adjustment will not affect the existing development suitability of either property. The adjustment, intended to address an existing nonconformity by increasing the setback distance to the Andrews' house, will more generally conform

to applicable policies of the Bolton Town Plan currently in effect, and the desired settlement patterns for the zoning districts in which the lots are located.

1. **Development Suitability.** Both lots include steep (15+%) and very steep (>25%) forested slopes and riparian areas along unnamed streams which are generally unsuitable for development, though not in the vicinity of the proposed boundary adjustment (Exhibit 3). Both lots have previously been developed for residential use with functioning water and wastewater systems; no additional development is proposed at this time.
2. **Bolton Town Plan.** Both lots are located largely in the Rural I District, described in the 2011 Bolton Town Plan to include “areas with ready access to public roads, which are generally suitable for residential development, including the town's traditional rural residential areas.” The stated purpose of this district is to “allow for traditional uses such as forestry and agriculture” as well as “moderate densities of residential development in appropriate locations” (p. 11). Both lots have been developed as rural residential properties, in conformance with the town plan. The proposed boundary adjustment will have no effect on rural resources identified in the plan for protection.
4. **Bolton Regulations.** No change in the existing access to or use of either parcel is proposed in association with the boundary adjustment. As such no information has been provided with regard to the BLUDRs or other town ordinances that may apply to subsequent development on either lot – e.g., with regard to steep slopes and surface waters as generally indicated on the draft subdivision plat. No additional development is proposed.
5. **District Settlement Patterns.** Both lots have been previously developed as rural residential lots. The proposed boundary adjustment, as shown on the draft subdivision plat (Exhibit 3), will not substantively affect existing lot configurations or dimensions. The adjusted lot area for each lot (19.11 and 24.18 acres remains consistent with the intent to maintain low to moderate densities of residential development within the Rural I and Rural II Districts.
6. **Lot Layout.** Zoning district boundaries are not shown or referenced on the draft subdivision plat; however as shown on the Bolton Tax Map (Exhibit 1), both lots are located largely within the Rural I District, but extend into the Rural II District (Tables 2.4, 2.5) which have the following minimum district dimensional standards:

	Rural I (Table 2.4)	Rural II (Table 2.5)
Lot Area	2.0 acres	10 acres
Road Frontage	200 feet	300 feet
Setback/Front	35 feet	35 feet
Setback/Rear	35 feet	50 feet
Setback/Side	35 feet	50 feet

3. The adjusted area of each lot (19.11 and 24.18 acres) exceeds minimum lot area requirements in both districts. Required setbacks are not shown on the draft plat (Exhibit 3), however the stated purpose of the boundary adjustment is to bring the house and deck on the Andrews’ property into conformance with the district setback requirement. According to the applicants, an existing shed located on the new property line will be relocated.

4. **Building Envelope.** No development is proposed at this time that would require the designation of building envelope.
5. **Survey Monuments.** Survey monuments will be installed as shown on the draft subdivision plat (Exhibit 3).

### **Section 7.3 Protection of Natural & Cultural Resources**

**Conclusion:** Based on the following findings, given that no additional development is proposed, the proposed boundary adjustment will not adversely affect natural and cultural resources on each lot, as identified on the 1995 and draft survey plats. These include steep and very steep forested slopes, unnamed streams, an old foundation and remnants of stone walls, fence lines and tree lines that mark former property boundaries and may also be representative of the historic use of each property.

6. **Resource Identification.** Environmentally sensitive areas identified on each of the lots from the existing 1995 and draft survey plats (Exhibits 2, 3) and the Bolton Resource Map include: steep (15+%) and very steep (>25%) slopes, surface waters (unnamed streams) and associated riparian areas, and contiguous, unfragmented forested upland areas that may be suitable for timber and wildlife management. Potential cultural resources identified on each lot include an old foundation (Andrews lot) and remnants of stone walls, fence lines and tree lines that mark former property boundaries and may also be representative of the historic use of each property.
7. **Surface Waters, Wetlands and Floodplains.** Under Section 3.17 of the BLUDRs, a 50-foot setback and 25-foot undisturbed vegetated buffer must be maintained along all unnamed streams and identified wetland areas. There are at least two unnamed streams – one on each lot – that flow west to Mill Brook, well outside of the area affected by the proposed boundary adjustment, as generally indicated on the draft subdivision plat (Exhibit 3). Required stream setbacks are not indicated on the draft subdivision plat, given that no additional development is proposed. No mapped wetlands or floodplains have been identified on the draft subdivision plat or the Bolton Resource Map.
8. **Rock Outcrops, Steep Slopes, Hillsides.** Under Section 3.16 of the BLUDRs, development may be allowed on steep slopes (15% or more) with DRB approval based on the submission and acceptance of an erosion control plan; but is prohibited on very steep slopes (>25%). Known areas of steep and very steep slope, as indicated on the draft subdivision plat (Exhibit 3) and Bolton Resource Map, are located on both parcels, but not in the vicinity of the proposed boundary line adjustment. No additional development is proposed.
9. **Historic and Cultural Resources.** As noted above (#6) potential historic or cultural resources identified on each of the properties to date, from the 1995 and draft survey plats (Exhibits 2,3), include an old foundation (Andrews lot) and remnants of stone walls, fence lines and tree lines that mark former property boundaries and may also be representative of the historic use of each property. These are located outside of the area of the proposed boundary adjustment.
10. **Farmland.** A contiguous portion of each lot includes open “meadowland” which is maintained by the applicants, and according to applicant testimony is included in the area of the proposed boundary adjustment, but is not currently in active agricultural use. Primary agricultural soils in the vicinity, as indicated on the Bolton Resource Map, will not be affected by the proposed conveyance of 0.25 acres associated with the boundary adjustment.

11. **Forestland.** The rear portion of both lots, including areas of steep and very steep slope, consist of contiguous, unfragmented forest cover, accessed from the Finlayson lot by an existing "Woods Road" as shown on the draft subdivision plat (Exhibit 3); however, neither lot is of sufficient acreage (25+ acres), before or after the boundary adjustment, for separate enrollment as forest parcels in the state's Use Value Appraisal Program. The proposed boundary adjustment, as shown on the preliminary plat (Exhibit 3), will not substantively affect existing lot configurations or dimensions, nor result in the further fragmentation of productive forestlands and forested wildlife habitat.

#### **Section 7.4 Open Space**

**Conclusion.** Based on the following findings, the DRB has determined that the proposed boundary adjustment will not affect the existing area, extent and overall configuration of contiguous open space on the adjoining parcels.

12. Given that no additional development is proposed, no information was required regarding the designation or preservation of open space under Section 7.3 of the regulations, including natural and cultural features initially identified on each lot. As such open space preservation under applicable standards of Sections 7.3 and 7.4 will remain a consideration for any future development on either lot that requires review and approval by the DRB.
13. As shown on the draft subdivision plat (Exhibit 3), the proposed boundary adjustment, representing the conveyance of only 0.25 acres (10,767 sq. ft.) from the Finlayson lot to the Andrews lot, will not substantively affect the existing area, extent and overall configuration of contiguous open space on either of the adjoining lots.

#### **Section 7.6 (A) Access**

**Conclusion:** Based on the following finding, the DRB has determined that the boundary adjustment will not affect shared use and maintenance of the existing gravel driveway that extends from York Road and serves both lots, as shown on the draft subdivision plat.

14. Both lots are accessed from York Road via a shared 50-foot right-of-way and gravel driveway, a portion of which traverses the area of the boundary adjustment, as shown on the draft subdivision plat (Exhibit 3). The boundary adjustment will, in effect, extend that portion of the driveway located on the Andrews parcel which serves the Andrews' lot.
15. No change is proposed to shared use of maintenance of the right-of-way or gravel driveway.

#### **Section 7.7 Facilities and Utilities**

**Conclusion:** Given the retention of easements by the applicant, public water supply systems and associated source protection areas located on the parcel to be conveyed will not be adversely affected by boundary adjustments or parcel conveyance. Any subsequent development within mapped Source Protection Areas will be subject to review by the Bolton Development Review Board under Section 3.18 of the BLUDR.

16. The existing lots are served by private onsite water supply and wastewater systems, as generally indicated on the draft survey plat (Exhibit 3).
17. The proposed boundary adjustment will effectively increase the distance of the well on the Andrews' property from the property line.

18. Existing systems, when installed, did not require state permits due to the size of the lots (>10 acres). The proposed boundary adjustment will not substantively alter the existing area of either lot.
  
19. No change in system location, capacity or ownership is proposed. According to the testimony of Mr. Haggerty, it is anticipated that the state's Wastewater Management Division will issue a "letter of negligible impact" under the new state rules.