



Town of Bolton Development Review Board

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

Cornett/Final Subdivision Approval, 2-Lot Subdivision
Application #2011-27-SD
February 24, 2012

Applicant

James and Toria Cornett
1400 Bolton Valley Access Road
Richmond, VT 05477

Application

(Application materials on file at the Bolton Town Office, procedural history attached.)

The applicants have requested approval to subdivide their existing 285 +/- acre residential lot into two lots, including a 29 +/- acre lot (hereafter referred to as Lot #1) that includes the existing single family dwelling, parking area and drive, and a separate 256 +/- acre forested lot (Lot #2), intended for conveyance to the adjoining property owner, which will remain undeveloped. The lot to be subdivided (Tax ID #9-3001000) is located at 1400 Bolton Valley Access Road, in the Residential II and Forest Districts, and is accessed from the public highway via a private bridge and driveway across Joiner Brook. The existing lot has 3,000+ feet of frontage along the access road.

The lot is also under a conservation easement held by The Nature Conservancy which, under the terms of the easement, must approve the subdivision and conveyance of the subdivided lot. The parcel is known to include steep (15+%) and very steep (>25%) slopes, stream bank and riparian areas along Joiner Brook and its tributaries, high quality core wildlife habitat, forestland suitable for timber management, and a recorded occurrence of American Ginseng. The developed portion of the lot, including the existing single family dwelling, is located within a "development zone" established under the terms of The Nature Conservancy's conservation easement. The property also includes a deeded trail access easements granted to the Catamount Trail Association, public access and lodging facility rights for the Long Trail, utility rights and easements granted to the Vermont Electric Power Corporation and the Green Mountain Power Corporation, and highway rights-of-way granted to the Town of Bolton, as recorded in the land records of the town and referenced in The Nature Conservancy's "Grant of Development Rights and Conservation Restrictions." VAST also has an agreement with the current owner to maintain a snowmobile trail across the property.

This application has been reviewed by the Bolton Development Review Board (DRB) as a minor subdivision under Section 6.5 (Final Subdivision Approval) and applicable 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. The DRB's procedural history and relevant findings are attached.

Decision – Final Subdivision Approval:

- Denied
- Approved
- Approved with Conditions:

The Bolton Development Review Board approves the subdivision of the 285+/-acre residential lot, located at 1400 Bolton Valley Access Road (Tax ID #9-3001000) into two lots, including a 29+/- acre residential lot to be retained by the applicant, and a 256+/- acre undeveloped, forested lot to be conveyed to the adjoining landowner, subject to the terms of the conservation easement held by The Nature Conservancy and the following conditions of municipal subdivision approval:

1. The subdivision plat to be recorded in the land records of the Town of Bolton shall include and show the following information, as agreed to by the applicant:
 - a. An inset showing the location of the subdivision in relation to the Bolton Valley Access Road, Joiner Brook, and adjoining properties.
 - b. Lot lines and markers for the two lots as subdivided, including the residential lot (Lot #1) as surveyed, the undeveloped lot (Lot #2) to be conveyed, and the lot dimensions and areas for each. The DRB waives the requirement to survey the outer boundaries of the larger lot (Lot #2) to be conveyed to the adjoining property owner.
 - c. The locations of all deeded easements and rights-of-way recorded in the land records of the town, including utility, highway and trail corridor easements.
 - d. Minimum setback distances from the Bolton Valley Access Road right-of-way and from parcel boundaries (lot lines), as required for the Rural II District.
 - e. The location of the designated building envelope ("Development Zone") on Lot #1, as established under the conservation easement held by The Nature Conservancy and marked on the ground with iron pins.
 - f. The locations on Lot #1 of the existing structures, vehicle access, well and septic system, including existing and replacement areas.
 - g. Joiner Brook and its tributaries – both perennial and intermittent – and required minimum setback distances from each under Section 3.17 of the Bolton Land Use and Development Regulations.
 - h. A plat notation referencing the conservation easement held by The Nature Conservancy, applying to both parcels as subdivided.
 - i. A plat notation that any structures to be constructed on Lot #1, except for a sugarhouse or lean-to, must be located entirely within the designated building envelope ("Development Zone").
 - j. A plat notation that Lot #2 is designated as undeveloped "open space" and cannot be further subdivided or developed without approval from the Town of Bolton.
2. No further development of Lot #1 is allowed outside of the designated building envelope ("Development Zone"), except for land conservation and forestry management practices and recreational uses and activities allowed under the terms of the conservation easement, which also allows for the construction of a sugarhouse and lean-to. All other structures and parking areas must be located entirely within the designated building envelope ("development zone") as shown on the subdivision plat.
3. "Protected property" including the portion of Lot #1 located outside of the "Development Zone" (building envelope), and all of Lot #2, shall be used, managed and maintained as undeveloped open space under the terms of the Nature Conservancy's conservation easement, as noted on the subdivision plat. No further subdivision or development is allowed without approval from the Town of Bolton.
4. Except for the existing bridge crossing, minimum setback distances and undisturbed, vegetated buffer areas shall be maintain along Joiner Brook (100 ft, 50 ft) and its tributaries (50 ft, 25 ft), in accordance with Section 3.17 of the Bolton Land Use and Development Regulations.

5. Vehicular access to both parcels from the Bolton Valley Access Road, across Joiner Brook, is limited to the existing access serving Lot #1 which, including the private bridge, shall be maintained in good condition as necessary to allow for emergency vehicle access to the residential property. Any additional, enlarged or relocated accesses and stream crossings shall require approval from the Bolton Development Review Board.
6. 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 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 24th day of February 2012, subject to all requirements and conditions of subdivision approval. Signed this ___ day of ___, 2012, by _____, DRB Chair.

7. No further approval from the DRB is required for the construction of new or replacement structures within the designated building envelope ("development zone") as shown on the subdivision plat, except as specified for any development on slopes of 15% or more under Section 3.16 (Steep Slopes) of the Bolton Land Use and Development Regulations. A zoning permit may be required.
8. No changes, modifications or other revisions that alter the subdivision as approved, including the location of subdivision boundaries, lot lines, easements, building envelope ("Development Zone"), accesses 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.
9. 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.
10. 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:

Michael Hauser – Yea
Sharon Murray – Yea
Michael Rainville – Yea

Susan Vita – Yea
Margot Pender – Yea

Dated at Bolton, Vermont this 24th day of February, 2012.

For the Development Review Board:



Sharon Murray, Chair

Bolton Town Clerk's Office
Received For Record
at May 14 2012 A.D.
at 9 o'clock 30 minutes A M
Recorded in Book 83 Page 811-818
Attest: Jane Atwood
Asst. Town Clerk

NOTICE:

1. In accordance with 24 V.S.A. §4449(e), the applicant is 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. This decision may be appealed to the Environmental Division of the Vermont Superior Court by an 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.

Attest: _____
Vermont Town Clerk
Recorded in Book _____
at _____ o'clock _____
minutes _____
A.D. _____
Bolton Town Clerk's Office
Received For Record

Review Process

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

Sketch Plan Review. A request for pre-application sketch plan review of the proposed 2-lot subdivision was submitted by the applicant on November 10th, 2011, and considered at a regular meeting of the Bolton Development Review Board on November 29th, 2011. A nonbinding guidance letter, on file at the town office, was mailed to the applicant on December 20th, 2011.

Final Subdivision Review. An application for final subdivision approval, dated January 12, 2012, was received by Zoning Administrator Miron Malboeuf and referred to the DRB. A public hearing was scheduled for January 24, 2012, 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 as warned, on January 24, 2012, 6:30 pm at the Bolton Town Office with a quorum of the DRB present. There were no reported ex parte communications, conflicts of interest, or recusals.

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

- James and Toria Cornett, Applicants 1400 Bolton Valley Access Rd, Richmond, VT 05477
- Paul Growald, Abutter PO Box 459, Shelburne, VT 05482
- The Nature Conservancy, Easement 27 Spear St., Suite 4, Montpelier, VT 05602

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

1. Transmittal Letter from James Cornett, dated November 3, 2011, with a project description.
2. "Sketch Plan" dated October, 2011, prepared by Paul W. Hannan, L.S., Calais, VT.
3. "Supplemental Plan" dated January, 2012, prepared by Paul W. Hannan, L.S. Calais, VT.
4. Letter from Paul Growald, Abutter, dated January 2, 2012, regarding his intent to purchase and manage the parcel to be conveyed.
5. Letter from The Nature Conservancy, dated January 20, 2012, giving permission to subdivide and convey protected property, subject to written conditions specified in the letter, and the terms of its existing conservation easement.
6. The Nature Conservancy conservation easement, "Grant of Development Rights and Conservation Restrictions," dated June 26th, 2009, as recorded in the land records of the town.
7. Vermont Natural Heritage Program Element Occurrence Report (forwarded on January 12, 2012) documenting a recorded occurrence on the property (EO #24) of American Ginseng, considered an uncommon plant recommended by the state for protection.

Following the submission of testimony and evidence, the public hearing on this application was adjourned on January 24th, 2012, triggering the 45-day period to issue a written decision.

Findings & Conclusions

The applicants' request for approval of a minor, 2-lot subdivision has been reviewed by the Bolton Development Review Board (DRB) for conformance with applicable subdivision review standards under Article 7 of the Bolton Land Use and Development Regulations (BLU&DR) 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

The proposed subdivision reflects the land's development suitability, conforms to applicable policies of the Bolton Town Plan currently in effect, and desired settlement patterns for the districts in which it is located. Lot layout is consistent with site topography and the intended use of each parcel. The proposed building envelope for Lot #1 coincides with the existing "development zone" established under The Nature Conservancy's conservation easement.

1. The proposed subdivision is located in the Rural II (Table 2.5) and Forest (Table 2.6) Districts, with the following minimum district dimensional standards:

	Rural II	Forest (> 1500' msl)
Lot Area	10 acres	25 acres
Road Frontage	300 feet	NA
Lot Width	NA	1000 feet
Setback/Front	35 feet	NA
Setback/Rear	50 feet	NA
Setback/Side	50 feet	NA

2. The lots to be created, as shown on the site plan, include a retained residential lot of 29+/- acres (Lot#1), and a 256+/- acre undeveloped forested lot (Lot #2), each having more than 1000 feet of total frontage on the Bolton Valley Access Road. As such both lots meet minimum district lot area and applicable lot width or frontage requirements. No further development is proposed, but required setback distances for each lot will be shown on the subdivision plat as recorded in the land records of the town.
3. The land to be subdivided includes very steep, forested slopes (>25%), riparian areas along Joiner Brook, and associated drainage areas that are not suitable for development, as shown on "Supplemental Plan" dated January 2012. Residential development is limited to the "development zone" shown on the smaller parcel (Lot #1) established under The Nature Conservancy's conservation easement, which remains in effect. No further development on either lot is proposed; however, under TNC's easement and permission to subdivide, the right is retained to build, construct and use a sugarhouse and lean-to on one of the two parcels, outside of the designated development zone.
4. The proposed subdivision is consistent with the intent of the Rural II District, under the Bolton Town Plan and bylaws, to "allow for limited, compatible, lower densities of development that maintain Bolton's rural character and protect significant natural resources, while discouraging subdivision and development in areas with limited access to public roads and facilities." The majority of land to be subdivided, including the 29-acre retained residential lot, is located in this district. According to the applicants both lots have been configured to allow for forestland enrollment in the state's Use Value Appraisal Program, and to maintain their existing rural character and resource values.
5. The proposed subdivision is consistent with the intent of the Forest District (including all lands above 1500 feet in elevation), to "protect Bolton's more remote and inaccessible forested upland areas from fragmentation, development and undue environmental disturbance, while allowing for the continuation traditional uses such as forestry, outdoor recreation, and compatible low density residential development." The land in this district is included in the larger 256-acre forested parcel (Lot #2) to be conveyed to the adjoining landowner and managed as part of a larger holding under the terms of The Nature Conservancy's conservation easement. It also includes, at a lower elevation, the Catamount Trail easement, as shown on the "Supplemental Plan."

6. The "development zone" established under the Nature Conservancy's conservation easement, as shown on the "Supplemental Plan" (to be shown on the subdivision plat) may serve as the "building envelope" designated under Section 7.2(E) of the regulations to limit the location of structures, parking areas and associated site improvements to a portion of the retained residential lot (Lot #1). Natural resources and constraints identified in the property, including very steep slopes (>25%), Joiner Brook, its tributaries and required stream setbacks and buffer areas, and a recorded occurrence of American Ginseng, are largely located outside of this zone, and protected under the terms of the conservation easement.
7. The proposed subdivision will not adversely affect access to renewable energy resources, which may include the harvesting of cordwood or woody biomass under the Forestry Plan approved by The Nature Conservancy.

Section 7.3 Protection of Natural & Cultural Resources

The proposed subdivision will not adversely affect environmentally sensitive areas or natural and cultural resources identified on the property, which are protected under the terms of the conservation easement held by The Nature Conservancy.

8. Environmentally sensitive areas identified on the property from available maps, inventories and property descriptions include steep and very steep slopes, surface waters and associated riparian and fluvial erosion hazard areas, high quality core wildlife habitat and natural areas (including a documented occurrence of American Ginseng), and forestland that is suitable for timber management.
9. Cultural resources identified on the property include 1.45 miles of Catamount Trail corridor (recognized under the easement as a statewide recreational resource), public access associated with the Long Trail, a VAST snowmobile trail, and undeveloped, scenic open space.
10. Under the terms of The Nature Conservancy easement, which shall remain in effect, "protected property" outside of the designated "Development Zone" (building envelope) shall be used only for forestry, educational, noncommercial recreation and open space uses. No residential, commercial, industrial or mining activities shall be permitted, and no building, structure (other than allowed signs, a sugarhouse, or lean-to) or appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the protected portion of the property. "Protected Property" as subdivided includes that portion of the smaller residential parcel (Lot #1) located outside of the Development Zone and the entire larger, undeveloped parcel (Lot #2).
11. Minimum stream setbacks for Joiner Brook (100 feet from top of bank or slope) and its tributaries (50 feet from top of bank or slope), as required under Section 3.17 of the Bolton Land Use & Development Regulations are to be shown on the final subdivision plat. Undisturbed vegetated buffer areas shall be maintained as required under Section 3.17, as a condition of subdivision approval. No additional stream crossings shall be allowed without approval from the Town of Bolton.
12. No additional development on subdivided lots is proposed. Any subsequent development outside of the designated building envelope (development zone) or on slopes of 15% or more shall require approval from the Town of Bolton.

13. Forestland, under the terms of the TNC easement, is to be managed under a "Forestry Plan" approved and enforced by The Nature Conservancy. Lots have configured to also allow for forestland enrollment in the state's Use Value Appraisal Program, to be managed under a forest management plan that is also approved by the state.

Section 7.4 Open Space

The proposed subdivision provides for the continued preservation of open space on subdivided parcels, under the terms of the Nature Conservancy's conservation easement previously recorded in the land records of the town. Protected land, which extends across both parcels, is contiguous to more than 7,500 acres of conserved land, and an additional 37,000 acres of state-owned land at the Mt. Mansfield State Forest.

14. The "Protected Property" as described and conditioned by the Nature Conservancy under the terms of their conservation easement includes that portion of the smaller, residential lot (Lot #1) located outside of the "Development Zone" and all of the larger lot (Lot #2) to be conveyed to and managed by the adjoining landowner as protected, conserved land. This land is contiguous to other conserved land.
15. The "Development Zone" (building envelope) on the residential parcel has been configured to exclude environmentally sensitive areas and significant natural and cultural resources located on the property (see finding #6).
16. Under the terms of its conservation easement, The Nature Conservancy allows for uses and activities on protected open space (property) that are compatible with sustainable resource management and conservation (see finding # 10).
17. The Nature Conservancy's conservation easement, "Grant of Development Rights and Conservation Restrictions" dated June 26th, 2009, as recorded in the land records of the town, provides the legal documentation necessary under Section 7.4(C) of the Bolton Land Use and Development Regulations to conserve protected open space (protected property) on the subdivided parcels. Under this section of the regulations, protected open space must also be indicated on the subdivision plat, as recorded in the land records of the town.

Section 7.6 (A) Access

No additional access from the Bolton Valley Access Road is proposed to serve the subdivided lot.

18. The property is currently accessed from the Bolton Valley Access Road, via a private bridge that crosses Joiner Brook. No additional accesses (curb cuts) are proposed to serve the subdivided lot.
19. The current access and bridge will be maintained as necessary to allow for emergency vehicle access. No additional permits or approvals are required for shared use and normal maintenance and repair of the existing access and bridge to the property, but DRB approval shall be required for any additional, widened or relocated access onto the town highway, and any additional stream crossings.