



# Town of Bolton Development Review Board

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

Randy & Misty Couch  
Appeal of Zoning Administrator's Determination  
Application #2015-22-AP/VAR  
May 4, 2016

## **Appellants**

Randy and Misty Couch  
128 Alton Mountain Road  
Alton Bay, NH 03810

## **Represented by**

David Sunshine  
Law Office of David Sunshine PC  
26 Bridge Street/ PO Box 900  
Richmond, VT 05477-0900

**Property:** 81 Gardiner Lane, Bolton, VT

## **Notice of Appeal**

(Notice of appeal and supporting documents are on file at the Bolton Town Office.)

The Appellants, Randy and Misty Couch through their attorney, David Sunshine, filed a notice of appeal with Development Review Board (DRB) on October 14, 2015 regarding a written determination issued on October 6, 2015 by former Bolton Zoning Administrator Miron Malboeuf concerning the appellant's lot located at 81 Gardiner Lane (ID#4-4040081), in the Town of Bolton.

Mr. Malboeuf, as stated in his letter of October 6, 2015, determined the following in regards to the parcel owned by the Appellants:

1. The lot, consisting of .70 acres, was purchased by the appellants from Donald O'Brien, of Richmond, Vermont, Grantor on April 3, 2003.
2. The Bolton Land Use and Development Regulations, dated January 26th, 2005, Section 3.17, Surface Waters and Wetlands, establish a minimum set back from streams of 50 feet.
3. Under Section 3.17(C), all structures and other impervious surfaces shall be set back at least 50 feet from:
  - (1) other naturally occurring streams and rivers (as measured from the top of the bank, or channel centerline where no bank is discernable), as identified on USGS topographic maps, Vermont Base Mapping Program orthophotos, or through field investigation.
4. The existing lot has a stream that bisects the lot. This is indicated on the attached Vermont Agency of Natural Resources, Natural Resources Atlas map.
5. This property is located in the Resort Residential District. The set backs are listed as:
  - Minimum Setback/Front (from ROW) 15 feet
  - Minimum Setback/Side 25 feet
  - Minimum Setback/Rear 25 feet
6. Therefore, it is my determination that considering the above that this lot is not suitable for development.

The Appellants' Attorney David Sunshine subsequently filed a letter dated October 14, 2015 appealing the Zoning Administrator's determination that the lot was not suitable for development, and requested a hearing with the Development Review Board. The Appellant's Attorney also filed an application for an appeal (notice of appeal), the required hearing fee, and a narrative outlining the requested relief pursuant to Section 9.5(C) of the regulations. As specified in the notice of appeal:

- The relief that is requested is to overturn the decision of the Zoning Administrator and determine that the lot is suitable for development; and
- As stated above the subject lot was previously subdivided in the Town of Bolton, and, as such, has vested rights and is suitable for development.

### **Hearing Process**

(Hearing notices, meeting minutes on file at the Bolton Town Office)

The notice of appeal was referred by the Zoning Administrator to the Bolton Development Review Board (DRB). The DRB found that the appeal was filed in a timely manner, within the 15-day period as required under 24 V.S.A. § 4465, and scheduled a public hearing for February 25, 2016, 6:30 PM at the Bolton Town Office, which was warned in accordance with 24 VSA § 4464 and Section 9.8(D)(1) of the Bolton Land Use and Development Regulations.

The public hearing to consider the application convened on February 25, 2016, 6:30 PM at the Bolton Town Office with a quorum of the DRB present. No ex parte communications or conflicts of interests were reported. Former Zoning Administrator Mr. Miron Malboeuf, and the Appellants' Attorney David Sunshine of the Law Office of David M. Sunshine PC, were both present at the hearing.

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

- Randy & Misty Couch, Owners/Appellants  
128 Alton Mountain Road  
Alton Bay, NH 03810
- David Sunshine, Attorney, representing Appellants  
26 Bridge Street/PO Box 900  
Richmond, VT 05477-0900

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

- Written determination from Bolton Zoning Administrator Miron Malboeuf to Mr. Randy Couch, dated October 6, 2015;
- Natural Resources Atlas for the property located at 81 Gardiner Lane, dated September 17, 2015, indicating stream location, buffer, and property lines, as provided by Zoning Administrator Miron Malboeuf;
- Correspondence to Town of Bolton DRB from Law Office of David Sunshine Esq., Re: Appeal of Decision of the Town of Bolton Administrator dated October 6, 2015; dated October 14, 2015 (received October 18, 2015);

- Correspondence to Town of Bolton DRB from Law Office of David Sunshine Esq., Re: Appeal of Decision of the Town of Bolton Administrator dated October 6, 2015; dated November 6, 2015 (received November 9, 2015) (2 pages);
- Town of Bolton Development Review Board- Application for Appeal/Request for Reconsideration Decssion [sic]: 2015-21-AP.ZADET, dated October 14, 2015;
- Correspondence to Town of Bolton DRB from Law Office of David Sunshine Esq., Re: Appeal of Decision of the Town of Bolton Administrator dated October 6, 2015; dated December 14, 2015;
- Town of Bolton Development Review Board- 2015-22-AAPPEAL + VAR, dated December 14, 2015;
- Copy of portions of survey plat for Lot E-3 (0.7 acres) [81 Gardiner Lane] as recorded in hanging file G-33 in the Bolton Land Records;
- Copy of Article 1, Section 1.3(C & D) highlighted of the Town of Bolton Land Use and Development Regulations as adopted on January 5, 2005;
- State of VT Subdivision Permit, Case No. EC-4-1709, Applicant Bolton Valley Corp, dated January 18, 1993 (3 pages);
- Warranty Deed Recorded in Book 53, Pages 893-894 of the Bolton Land Records, dated August 13, 1999 (2 pages);
- Declaration of Covenants, Conditions and Restrictions for Blackberry Lane Association dated February 22 (no year listed) (8 pages);
- Correspondence from the Law Office of David Sunshine PC, Re: Appeal of Decision of the Town of Bolton Zoning Administrator dated October 6, 2015 and request for a variance, dated March 24, 2016 (3 pages);
- Hand-drawn site plan overlaid on survey plat indicating 'existing footings' and setback approximations to surface waters (survey plat dated August 8, 2002);
- Bolton Valley Corporation "Blackberry Lane Subdivision, Facilities Plan," prepared by Vermont Survey Consultants Inc., Drawing 4 of 8, dated October 23, 1992;
- State of Vermont Public Water System Permit to Construct, Project #E-0161, WSID # 051, dated October 16, 1995, received October 20, 1995 (3 pages).

The hearing was continued to March 24, 2016, 6:30 PM, Bolton Town Office, pending additional information from the Appellants. At that meeting the DRB agreed, based on the evidence presented, to consider the lot a legally established, nonconforming lot, given the lack of local permitting records on file for the time in question. The DRB adjourned the hearing that evening, marking the start of the 45-day period for the issuance of written findings and a decision.

## **Findings**

DRB findings are presented as follows:

1. The Appellants purchased the subject lot at 81 Gardiner Lane, consisting of .70 acres, from Donald O'Brien of Richmond, Vermont on April 3, 2003.
2. The warranty deed for the subject lot (Lot E-3), was recorded in the Bolton Land Records (Book 53, Pages 893-894) on August 13, 1999, as shown on the "Boundary Line Adjustment Survey of Land of Randy and Misty Couch- Blackberry Lane, Bolton, VT" survey plat dated July 2001 (G-33). The lot is also subject to the recorded "Declaration of Covenants, Conditions and Restrictions for Blackberry Lane Association" dated February 22nd.

3. The lot is also referenced under state subdivision (EC-4-1709), water and wastewater permits (Project #E-0161, WSID # 051) issued to the Bolton Valley Corporation, to be served by the Bolton Valley Corporation's public water supply and wastewater systems.
4. The lot, as recorded, predates the current Bolton Land Use and Development Regulations, in effect as of January 5, 2005 and as amended through August 9, 2010. Land subdivision and development at the time of recording were subject to review and approval under the Bolton Zoning Regulations adopted in 1989, revised May 1992.
5. No records of local approvals issued by the town for the subdivision creating the lot in question, nor for its subsequent development, have been located in town land record or permit files.
6. The lot contains an unnamed stream running through the approximate center of the parcel, as indicated on the Vermont Agency of Natural Resources, Natural Resources Atlas map, and as shown on the sketch plan of the parcel submitted with the appeal.
7. Under Section 3.17 (Surface Waters and Wetlands) of the Bolton Land Use and Development Regulations, a minimum setback of 50 feet from naturally occurring streams and surface waters is required. A 100-foot setback from the stream was also required under Section 7 of the Bolton Zoning Regulations in effect at the time the subdivision plat was recorded.
8. The subject lot is located in the Resort Residential zoning district. Minimum dimensional requirements for the Resort Residential District are listed as follows:

Minimum Lot Area:	2 acres
Minimum Setback/Front (from ROW):	15 feet
Minimum Setback/Side:	25 feet
Minimum Setback/Rear:	25 feet
9. The lot does not meet the minimum acreage requirement for the district in which it is located. It is in separate, unaffiliated ownership with the adjoining parcels, which would preclude its merger with adjoining lots under Section 3.7.
10. The lot is also currently undeveloped, but includes remnants (footings) of a structure formerly located on the property. The previous structure was removed from the lot more than two years ago; it therefore does not establish a vested right under Section 3.1 of the regulations (Abandoned and Damaged Structures) to construct a new or replacement structure in the same location.
11. No application or site plan has been filed to date that shows the location of a proposed house site or other proposed development on the lot in relation to required stream, right-of-way or property line setbacks.

## **Conclusions**

Based on the above findings, the Board concludes that:

1. The subject parcel is clearly an existing nonconforming lot. There is no information on file in town land records or permit files to determine whether or not the lot was legally established

under the Bolton Zoning Regulations in effect at the time the lot was recorded, with vested rights attached, or that the previous structure on the lot, as indicated on the sketch plan, had been approved by the town. The DRB also acknowledges that some records from this period (e.g., permit files, meeting minutes) which predate town office reconstruction, may be missing or misfiled, and cannot be located. Given the documentation provided in evidence, that the lot was issued required state permits and approvals, and was recorded in the land records of the town more than 15 year ago, the DRB has agreed to consider the lot in question a legally established, nonconforming lot.

2. The Board concurs with the Zoning Administrator's determination that there are physical and environmental constraints that make the lot difficult to develop in conformance with the town's prior and current regulations, including relevant stream and property line setback requirements.
3. The regulations, however allow the DRB to reduce required setbacks, subject to review under statutory variance criteria (Section 9.6), for nonconforming lots that have unique physical characteristics and physical conditions that prohibit development in strict conformity with the zoning regulations.

At this time no variance request, accompanied by a site plan showing the specific location of proposed development in relation to required stream and property line setbacks, has been filed with the DRB. As such, not enough information has been provided for the DRB to determine whether a variance could be granted that would allow the lot to be developed. Until a properly filed zoning permit application, site plan and variance request are submitted, the Board can make no determination whether or not the lot in question is suitable for development. As such, we reverse the Zoning Administrator's previous determination that the lot is undevelopable; without at the same time affirming that the lot is, in fact, developable.

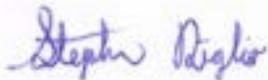
**Issued (5-0) by the Bolton Development Review Board:**

Stephen Diglio – yea  
John Devine – yea  
Charmaine Godin – yea  
Sharon Murray – yea  
Rob Ricketson – yea  
Adam Miller - yea

Michael Rainville – absent

**Dated at Bolton, Vermont this 4th day of May, 2016.**

**For the Development Review Board:**



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Stephen Diglio, 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.