

## Town of Bolton Development Review Board

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

In re: **Kosiba, Ingram/Application #2012-22-CU  
Conditional Use Approval/Steep Slopes  
August 31, 2012**

### Applicants

#### Applicants:

Alexandra Kosiba and Lucas Ingram  
PO Box 953  
Richmond, VT 05477  
1530 Notch Rd

#### Owners of Record:

Margaret Montgomery and William Fogg  
1514 Notch Road  
Jericho, VT 05465

### Application

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

The applicants request conditional use approval to construct a single family dwelling on steep slopes (15% or more) under Sections 3.16 and 5.4 of the Bolton Land Use and Development Regulations. The dwelling and driveway are to be constructed within a designated building envelope on a pre-existing, forested, undeveloped 10.1-acre lot currently owned by Margaret Montgomery and William Fogg (parties to the application), located at 1530 Notch Road (Lot #1, ID# 5-0041530) in the Rural II District. An intermittent stream and a utility easement also cross the property.

The applicants also request approval to erect a temporary dwelling (yurt) on the property to be occupied by the applicants during house construction, through July 2013. Temporary and permanent dwellings are to be served by new onsite potable water supply and wastewater systems, subject to state permits and approvals.

This application has been reviewed by the Bolton Development Review Board (DRB) under applicable standards of the Bolton Land Use and Development Regulations (BLUDR) in effect as of January 26, 2005, and as amended through August 9, 2010.

The Development Review Board's procedural history and relevant findings are attached.

### Decision

- Denied  
 Approved  
 Approved with Conditions:

1. A revised site plan shall be filed with the Zoning Administrator prior to the issuance of a zoning permit which:
  - Includes the proposed parking area within the designated building envelope, as required under the regulations.
  - Identifies the locations on the ground of iron pins marking building envelope corners.
  - Includes a notation on the site plan that all building additions, accessory structures and parking areas must be located within the designated building envelope as approved by the DRB.
2. Future additions or accessory structures to the single family dwelling that are allowed under the regulations as permitted uses, are located within the designated building envelope, and conform to

these conditions of approval shall require only the issuance of a zoning permit from the Zoning Administrator. Conditional use approval shall be required for any change in the size or location of the designated building envelope as approved by the DRB.

3. Per Section 3.16 of the regulations (Steep Slopes), no site disturbance, clearing or development, including building or driveway construction, shall occur on slopes in excess of 25% within or outside of the designated building envelope.
4. The DRB agrees to waive the requirement, per Section 3.16 of the regulations (Steep Slopes), for a stormwater management and erosion control plan designed by a professional engineer; however all development on slopes of 25% or less shall be constructed, and all disturbed slopes stabilized as necessary to prevent surface runoff, erosion and downslope movement of material, and to minimize associated risks to surface and groundwater, public facilities, roads and neighboring properties as described in the application, and in accordance with state-accepted management practices for stormwater management and erosion control (e.g., "The Low Risk Site Handbook for Erosion Prevention and Sediment Control" VT Dept. of Environmental Conservation, 2006). Accordingly:
  - A silt fence, as depicted on the "Site Plan" dated August 13, 2012, shall be installed and properly maintained during all phases of construction to prevent stream sedimentation. The silt fence shall be set back at least 25 feet from the stream per minimum stream buffer requirements, as measured horizontally from the top of bank or from the stream channel centerline if no stream bank is discernible.
  - Site disturbance, clearing and grading shall be limited to those areas identified for construction and improvement within the designated building envelope, as described in the application and as shown on the revised Site Plan dated August 13, 2012, as amended under Condition #1.
  - Site disturbance, clearing and development are prohibited outside of the designated building envelope, except as necessary to install and maintain the driveway, water supply and wastewater systems as indicated on the revised Site Plan, dated August 13, 2012, or for forest management under state-accepted forest management practices.
  - All disturbed areas shall be temporarily stabilized during construction and permanently stabilized following construction as described in the application, to include re-vegetation with native, non-invasive species, and the installation of stone retaining walls.
5. In accordance with Section 3.17 of the regulations (Surface Waters), the designated building envelope and all other development on the lot, including the driveway and wastewater system, shall be located outside of the required 50-foot stream setback as shown on the Site Plan dated August 13, 2012, and as measured horizontally from the top of bank or from the channel centerline if no stream bank is discernible. In addition:
  - Allowed stream buffer and stream channel disturbance is limited to that required for wastewater line installation. Following line installation, disturbed stream buffer and channel areas shall be restored to their natural state.
  - Due to the steepness of slopes within and adjoining the drainage area shown on the Site Plan dated August 13, 2012, the entire 50-foot setback area shall be maintained or re-established following construction as an undisturbed, naturally vegetated buffer along both banks of the stream, except as necessary to access and maintain the wastewater system. No other excavation, fill or grading shall occur within the buffer area.

6. The driveway serving the dwelling shall be constructed to B-71 standards for residential drives, and the requirements of Section 3.2 (Access) of the regulations:
  - The driveway shall not exceed an average finished grade of 15% within any 50-foot section; the approach area within 20 feet of the road right-of-way shall not exceed a 3% grade.
  - An access (curb cut) permit must be obtained from the Town of Bolton prior to the start of construction.
7. The temporary dwelling (yurt) shall be located within the designated building envelope as indicated on the Site Plan dated August 13, 2012, and shall be removed within one month of the issuance of a certificate of occupancy for the permanent dwelling by the Zoning Administrator, or within one year of the issuance of the zoning permit, if construction on the permanent dwelling has not substantially commenced and a permit extension has not been requested. The temporary yurt shall be served by water and wastewater systems permitted by the state, as indicated in the application.
8. Outdoor lighting permanently installed on the site shall meet the requirements of Section 3.9 of the BLUDR, including the requirement that outdoor lighting shall be cast downward or be designed to minimize glare (e.g., through the use of recessed, shielded, cutoff or shaded fixtures), and shall not direct light upward or outward onto adjoining properties, public waters or public rights-of-way.
9. The applicants must obtain a zoning permit from the Zoning Administrator prior to beginning site work and construction, including the installation of the temporary dwelling. In the event that a zoning permit has not been obtained within one year of the date of this decision, DRB approval shall expire and reapplication shall be required.
10. All other required state and municipal permits and approvals must be obtained prior to the start of construction.
11. A temporary certificate of occupancy must be obtained from the Zoning Administrator prior to occupancy of the temporary dwelling (yurt) to ensure that water and wastewater systems have been installed as permitted by the state. A final certificate of occupancy must be obtained from the zoning administrator following construction but prior to occupancy of the permanent dwelling, as required under Section 9.4 of the BLUDR.
12. These conditions of approval shall run with the land and are binding upon and enforceable against permittees and their successors. By acceptance of this permit, 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.

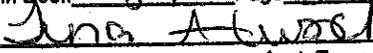
**Approved with conditions (4-0) by the Bolton Development Review Board:**

Sharon Murray – Yea  
Charmaine Godin (Alternate) – Yea

Michael Rainville – Yea  
Susan Vita – Yea

Dated at Bolton, Vermont this 31th day of August, 2012.

  
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Sharon Murray, Chair  
Bolton Development Review Board

**Bolton Town Clerk's Office**  
**Received For Record**  
September 10, 2012 A.D.  
at 8 o'clock 00 minutes A.M.  
Recorded in Book 84 Page 544-552  
Attest:   
Asslt. Town Clerk

**NOTICES:**

1. In accordance with 24 V.S.A. §4449(e), the applicants are hereby notified that state permits also may be required prior to land subdivision or construction. The applicants 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 Superior Court by an interested person who participated in the proceeding before the Development Review Board. The 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.

**Review Process**

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

An application for conditional use review approval was filed by Alexandra Kosiba and Lucas Ingram, in association with current property owners Margaret Montgomery and William Fogg, on 7/4/12. The application was accepted as complete by Bolton Zoning Administrator Miron Malboeuf on 7/26/12 and referred to the Bolton Development Review Board (DRB). A public hearing of the DRB was scheduled for 8/14/12 and warned by the Zoning Administrator in accordance with Section 9.8(D)(1) of the Bolton Land Use & Development Regulations (BLUDR) and 24 V.S.A. § 4464.

The public hearing to consider the application was convened on 8/14/12, 6:30 pm at the Bolton Town Office with a quorum of the DRB present. No ex parte communications or conflicts of interest were reported. The following persons attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Alexandra Kosiba and Lucas Ingram, Applicants  
PO Box 953 Richmond, VT 05477
- Tony Barbagallo, Abutter  
1519 Notch Rd. Jericho, VT 05465
- Robert Ricketson, Local Resident  
234 Mill Brook Rd. Jericho, VT 05465

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

- Signed application form dated 7/4/12, and attached project description, statement of project compliance, and project schedule (4 pp).
- Site photo (no date).
- Copy of the recorded Land of Transformations Subdivision Plat, dated August 1991, showing the dimensions and location of Lot #1 in relation to neighboring properties and the Notch Road.
- Site Plan, dated 7/15/2012 prepared by Spence K. Harris, Licensed Designer (No. 310-B), Vermont Contours, Inc. PO Box 384 Bristol, VT 05443, showing the project location (inset) and plot plan, and the locations of proposed temporary and permanent dwellings, water and wastewater systems and isolation zones, driveway and parking area in relation to the Notch Road, site topography (1-ft contours) and drainage.
- Revised Site Plan, dated 8/13/12, indicating slopes, and showing the location of the proposed building envelope and silt fence, and silt fence specifications (typical).
- Copy of the Warranty Deed dated 1/26/98, as recorded on 1/28/98, transferring ownership of the parcel from Transformations Inc. to Margaret L. Montgomery, the current property owner, which also references a utility easement conveyed to Green Mountain Power Corporation and Contell, dated 10/10/91, as record in in the Bolton Land Records.

Messrs. Barbagallo and Ricketson spoke in support of the applicants and the application.

The DRB adjourned the hearing that evening, following the submission of testimony and evidence, marking the start of the 45-day period for the issuance of written findings and a decision.

**Findings**

The applicants' request for conditional use approval was reviewed by the Bolton DRB for conformance with applicable standards of the Bolton Land Use and Development Regulations (BLUDR) in effect as of January 5, 2005, and amended through August 9, 2010, including the following:

- Rural II Zoning District (Table 2.5)

- Steep Slopes (Section 3.16)
- Surface Waters (Section 3.17)
- Conditional Use Review (Section 5.4)

DRB findings and conclusions under each of these are presented as follows.

**Zoning District Standards (Table 2.5)**

The proposed development, including temporary and permanent dwellings as shown on initial and revised site plans submitted as part of the application, meet the dimensional, use and supplemental standards of the Residential II District in which they are located.

1. **Lot Area.** The existing lot 10.1-acre lot, created in 1991 prior to the effective date of the current regulations, meets the current minimum district lot area requirement of 10 acres.
2. **Frontage.** The existing lot, having 301.6 feet of frontage along the Notch Road as shown on the recorded subdivision plat and referenced in the application, meets the current minimum district road frontage requirement of 300 feet.
3. **Setbacks.** Temporary and permanent building sites shown on the revised Site Plan, dated 8/13/12, are located outside of the required minimum 35-foot setback from the road-right-of-way, required 50-foot setbacks from side and rear property lines, and the required 50-foot setback from surfaces waters and wetlands (as specified under Section 3.17, see below).
4. **Use.** Both a single family dwelling and a seasonal (or temporary) camp, as proposed, are allowed in this district as permitted uses. The temporary dwelling (a yurt) is to be removed following the construction of the permanent single family dwelling, as described in the application. Each dwelling is to be served by the water and wastewater system as permitted by the state.
5. **Building Envelope.** A designated building envelope is not required for development within this district, but has been proposed as shown on the revised Site Plan dated 8/13/12, to limit development, site disturbance and clearing on steep slopes, per Section 3.16 of the BLUDR.

**Steep Slopes (Section 3.16)**

If developed as proposed, using construction, stormwater management and erosion control practices that minimize site disturbance, runoff and erosion, and prevent stream alterations and sedimentation, the proposed development will conform to the BLUDR for development on steep slopes.

6. The lot, including portions to be developed, include steep (15+%) and very steep (>25%) slopes, as shown on the revised Site Plan, dated 8/13/12 submitted in support of the application.
7. Sections of the driveway, and the proposed site for the permanent dwelling, are both located on slopes up to but not exceeding 25%. Development on steep slopes typically requires the submission of a stormwater management and erosion control plan prepared by a professional engineer licensed by the state.
8. Given the limited scope and extent of the proposed work, the applicant has instead provided a revised Site Plan, dated 8/13/12, prepared by a site designer certified by the state, which indicates areas of steep slope and identifies the location and specifications for silt fencing along an intermittent stream in the vicinity of proposed development. The application narrative also includes information regarding temporary and permanent slope stabilization measures to be used, including

maintaining existing vegetation, re-vegetating disturbed areas, and the use of permanent stone retaining walls along the front of the house.

9. As proposed, site clearing will be minimal and limited to the driveway, house site, well and septic areas. The total area to be disturbed is less than an acre. As such it falls under the state's classification for low risk site development and recommended management practices presented in "The Low Risk Site Handbook for Erosion Prevention and Sediment Control" (VT DEC, 2006 ed).
10. A building envelope, as shown on the revised Site Plan dated 8/13/12, has been designated to define and limit the extent of existing and future site clearing and development on steep slopes. This includes proposed temporary and permanent dwelling sites, but does not currently include the proposed parking area, as generally required for building envelopes under Section 7.2 of the BLUDR.
11. The house will be built into the slope of the hill to take advantage of the terrain, and to reduce some construction costs. The slope within the 768 sq. ft. footprint of the house site will be excavated to accommodate a walk-out basement on the west side, with a grade change above providing access to the first floor.
12. A 150-foot gravel driveway and a 2 to 3-space parking area are to be sited along contours to minimize the amount of grading and cut and fill required, as indicated on the revised site plan dated 8/14/12. The location of the proposed driveway may vary somewhat to preserve trees and minimize site impacts.
13. The driveway will be designed to meet B-71 standards for residential driveway design, drainage and ditching. It must also meet other applicable requirements pertaining to access and driveways under Section 3.2 (Access & Driveways) of the BLUDR, including the requirement that the finished grade not exceed 15% over any 50-foot section as necessary to allow for emergency vehicle access. A highway access permit from the town is also required for access onto the Notch Road.

**Surface Waters & Wetlands (Section 3.17)**

If developed as proposed, to limit encroachment and disturbance within required stream setback and expanded stream buffer areas, and to minimize stream bank and channel disturbance associated with a proposed utility line crossing, the development will conform to surface water protection standards under Section 3.17 of the regulations.

14. An intermittent stream divides the property, as generally shown on initial and revised site plans submitted with the application. The slopes along and within the vicinity of the drainage area range from steep (15+ %) to very steep (>25%).
15. Under Section 3.17, all development, including building envelopes, structures, septic systems and driveways, must be set back a minimum of 50 feet from the stream as measured horizontally from the top of the stream bank or from the channel centerline if no stream bank is discernible. The revised site plan shows the approximate location of this setback distance in relation to the stream.
16. Under Section 3.17, an undisturbed, naturally vegetated buffer at least 25 feet in width, as measured horizontally from the top of the stream bank or from the centerline of the stream channel if no bank is discernible, must be maintained along both sides of the stream. No excavation, fill or grading shall occur within the buffer area, and vegetation shall be left in an undisturbed state, except as allowed for limited encroachments, including utility crossings, subject to DRB approval.

17. The DRB may require increased setback and buffer distances based on specific site conditions, including steep slopes. Given the steepness of the slopes adjoining the stream, a 50-foot buffer (to the extent of the required setback distance) as indicated on the revised Site Plan, dated 8/13/12, will more effectively prevent surface runoff, soil erosion and sedimentation, and protect water quality and riparian habitat.
18. The building envelope, including proposed temporary and permanent dwelling sites, and the proposed parking area are located outside of the stream setback and buffer area. The approximate location proposed for the driveway, however, extends into the required setback area.
19. The proposed septic disposal area as indicated on the revised Site Plan dated 8/13/12 also appears to be located outside of the required stream setback but, because of site limitations, is located on the opposite side of the stream from the house. This will require the installation of a small pump to send waste under the stream channel and into the septic system on the other side of the stream, as shown on site plans. The intent is to bury the septic line below the stream channel, subject to state approval. Stream bank and channel disturbance will be minimized.

**Conditional Use Review Standards (Section 5.4)**

**The capacity of existing or planned community services or facilities.** The proposed project will have no undue adverse effect on municipal services and facilities.

20. **Water/Wastewater Systems.** The dwelling will be served by new onsite water and wastewater systems, including a conventional onsite septic system subject to approval by the state. Applicants have applied for state permits, based on the Site Plan prepared by a licensed designer, dated 7/15/12. The proposed well isolation distance extends onto the adjoining property to the north. No comments have been received from the abutting landowner, Gabriel Barrett, who was sent written notification of these proceedings.
21. **Public Roads.** The driveway will be designed to B-71 standards for residential drives, as required under the BLUDR. A highway access permit must also be obtained from the town for access onto the Notch Road.
22. **Emergency Services.** The 150-foot gravel driveway will be designed to B-71 standards, and associated standards under the BLUDR that require the finished grade not to exceed 15% over any 50-foot section, as necessary to allow for emergency vehicle access.

**The character of the area affected.** The proposed residential development is an allowed use in the Rural II District and as such will not have an undue adverse effect on the existing or planned character of the area.

23. The application is for the construction of a single family dwelling, allowed as a permitted use in the Rural II District, the purpose of which is to "allow for limited, compatible, lower densities of development that maintains Bolton's rural character, and protect significant natural resources, while discouraging subdivision and development in areas with limited access to public roads and facilities." A seasonal dwelling (camp) such as a yurt is also an allowed use in this district.
24. The development has been designed to minimize impacts on natural resources, including steep slopes and the intermittent stream identified on the property.

**Traffic on roads and highways in the vicinity.** The proposed dwelling will have no undue adverse effect on traffic or roads in the vicinity of the project.

25. The residential dwelling is expected to generate no more than ten trip ends per day (per ITE standards for single family dwellings), which will have no undue adverse effect on existing traffic on the Notch Road.

**Bylaws in effect.** The project will have no undue adverse effect upon municipal bylaws and ordinances currently in effect.

26. Applicable bylaws include the Bolton Land Use & Development Regulations and the Bolton Motor Vehicle Ordinance (11/01/93). Under the town's vehicle ordinance no parking is allowed within town highway rights-of-way. A highway access permit issued by the town is also required for this project.

**The utilization of renewable energy resources.** No change is proposed with regard to the use of, or access to, the utilization of renewable energy resources.

27. The project will not interfere with the sustainable use of renewable energy resources, access to, direct use or future availability of such resources. The parcel is currently forested. Limited clearing is proposed to accommodate the development, including a house site that is oriented to take advantage of passive solar heating. The temporary dwelling will be heated with wood

**Legal Documentation.** The applicant must also obtain applicable state and municipal permits for this project.

28. The applicant has applied for water and wastewater system permits from the state. A town highway access permit is also required.