



Town of Bolton
Development Review Board

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

Phillip Harrington
Conditional Use Review
Application #2014-07-ZP-CU
October 29, 2015

Applicant

Mr. Phillip Harrington
PO Box 773
Waterbury, VT 05676

Property: Bolton Valley Access Road, Tax ID 04-010.000

Application

(Application materials on file at the Bolton Town Office)

The applicant, Phillip Harrington, has requested approval to convert an existing right-of-way over the Broadway Trail for the purposes of developing a single-family dwelling. The project is located off of Bolton Valley Access Road in the Rural II district.

The application has been reviewed by the Bolton Development Review Board (DRB) as a conditional use under the Bolton Land Use and Development Regulations (BLUDRs) as amended, effective August 9, 2010, including applicable zoning district criteria (Table 2.5) and conditional use review standards (Section 5.4). The Development Review Board's procedural history and findings are attached.

Decision – Conditional Use Approval

- Denied
 Approved
 Approved with Conditions

The DRB hereby approves the conditional use approval requested by the applicant, Phillip Harrington, as listed in the application and shown on Site Plan prepared by Little River Surveying Company LLC, (Job #13939) last revised March 2014, except as amended herein, subject to the following conditions of approval:

1. Prior to the issuance of any zoning permit by the Zoning Administrator, the property owner shall:
 - a. File a revised site plan showing all existing and proposed improvements, as approved by the DRB. The revised site plan shall include notes specifying that all new principal and accessory structures and parking areas shall be located within the designated building envelope as shown on the site plan; no development is allowed within the 100-foot setback of Joiner Brook; and that no site disturbance, removal of vegetation or development is allowed within the 50-foot buffer along Joiner Brook without the approval of the Development Review Board.
 - b. Obtain a Highway Access Permit from the Bolton Select Board;

- 1 c. File and record a State of VT Potable Water and Wastewater Systems Permit in the
2 Bolton land records.
- 3 2. The potable water supply and wastewater systems serving the lot shall be located as generally
4 shown on the draft Site Plan last revised March 2014, and outside of required stream setbacks.
5
- 6 3. A 100- foot setback and 50-foot undisturbed vegetated buffer shall be maintained along the
7 Joiner Brook. A 50- foot setback and 25-foot undisturbed vegetated buffer shall be maintained
8 along all unnamed surface water streams.
9
- 10 4. The designated building envelope shall be marked on the ground with iron pins in the locations
11 indicated on the Site Plan.
12
- 13 5. Access to the lot, including driveway and pull-off areas, shall be installed as shown on the Site
14 Plan, and be designed and upgraded as necessary to meet B-71 Standards. The average finished
15 grade of the driveway shall not exceed 15% within any 50-foot section. The Applicant is solely
16 responsible for upgrading and maintaining the driveway to B-71 Standards unless and until a
17 Shared Maintenance Agreement is executed. In the event that a Shared Maintenance
18 Agreement is reached between the property owner and others with access rights, the
19 Agreement shall be forwarded to the Zoning Administrator for review, prior to recording in in
20 the Bolton Land Records.
- 21 6. Site clearing, including the removal of vegetation and ground cover, is restricted to the
22 designated building envelope, except for forest management activities preformed under a forest
23 management plan approved by the Chittenden County Forester.
24
- 25 7. The Applicant is required to re-vegetate previously cleared areas outside of the designated
26 building envelope in order to re-establish natural vegetation and screening and stabilize steep
27 slopes.
28
- 29 8. The two existing yurts on the property can remain on the property as temporary shelters for
30 private, recreational use, as allowed under Section 4.4 of the regulations, provided that they are
31 not: located within required setbacks from surface waters and property lines; not occupied on
32 the premises for more than 120 days in any one-year period; and not connected to a water or
33 wastewater system on the premises.
- 34 9. Access to the lot may remain gated as requested by the Vermont Department of Forests, Parks
35 and Recreation. In the event that the gate is locked, notice shall be provided to the Bolton Fire
36 Department and Richmond Rescue, along with the key or code to unlock the gate in the event of
37 an emergency.
- 38 10. Stormwater and soil erosion during site development, particularly on slopes of over 15% or
39 more, shall be managed in accordance with the "Low Risk Site Handbook Erosion Prevention and
40 Sediment Control" as most recently issued by the Vermont Department of Environmental
41 Conservation.
- 42 11. Electrical and communication service is to be provided by on site generation. Addition of
43 overhead or underground electric or telephone/cable service will require DRB review and
44 approval.
- 45 12. Subsequent development is subject to all applicable requirements of the Bolton Land Use and
46 Development Regulations in effect at the time of application. All municipal and state permits,

1 including highway access, and potable water supply and wastewater permits, must be obtained
2 prior to the issuance of zoning permits and the start of site work and construction.

3 13. The Zoning Administrator is authorized to review and permit minor modifications to the location
4 of the access drive and pull-off areas, in association with the issuance of a zoning permit.

5 14. A certificate of occupancy must be obtained from the Zoning Administrator following
6 construction of the dwelling and driveway access, but prior to occupancy and use, to ensure that
7 they have been constructed as approved by the Development Review Board, as required under
8 Section 9.4 of the BLUDR. Prior to the issuance of a Certificate of Occupancy by the Zoning
9 Administrator, the property owner shall:

10 a. Provide certification from a civil engineer licensed in the State of Vermont that all permitted
11 driveway improvements have been completed in accordance with the submitted plans and
12 B-71 Standards.

13 b. Provide certification from a professional engineer or site technician licensed by the State of
14 Vermont that the wastewater system has been installed and tested as approved by the
15 state.

16 c. Provide certification that the dwelling meets applicable state Residential Building Energy
17 Standards (RBES). A RBES Certificate must be recorded in the land records of the town prior
18 to the issuance of a certificate of occupancy.

19
20 15. These conditions of approval shall run with the land and are binding upon and enforceable
21 against the permittee and his successors. By acceptance of this permit, the permittee agrees to
22 allow authorized representatives of the Town of Bolton to access the property subject to this
23 approval, at reasonable times, for purposed of ascertaining compliance with the conditions of
24 approval.

25
26 **Approved with conditions (4-0) by the Bolton Development Review Board:**
27

Michael Rainville – Aye
Stephen Diglio– Aye
Charmaine Godin – Aye
Sharon Murray – Aye

Dated at Bolton, Vermont this 29th day of October, 2015.

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)

An application to convert the existing right-of-way over the Broadway Trail for the purposes of developing a single family dwelling (#2014-07-ZP-CU) was filed by Phillip Harrington on June 6, 2014. The application was accepted as complete by Bolton Zoning Administrator Miron Malboeuf and referred to the Bolton Development Review Board for a public hearing. A public hearing of the DRB was scheduled for June 24, 2014 and warned by the Zoning Administrator in accordance with Section 9.8(D)(1) of the regulations and 24 V.S.A. §4464.

The public hearing to consider the application convened on June 24, 2014, 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. The following persons attended and participated in the hearing process, and may be afforded status as interested persons with rights to appeal:

- Phillip Harrington, Applicant- 297 Dupuis Road, Irasburg, VT 05845
- Jason Nerenberg, VT FPR, Stewardship Forester, 111 West Street, Essex Junction, VT 05452-4695

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

- A completed application for conditional use review (2014-07-ZP.CU), dated June 6, 2014;
- Project outline/description referencing sections of the regulations, as submitted with the application;
- Written request, dated June 6, 2014 to waive as inapplicable: site grading and drainage requirements; landscaping, screening, outdoor lighting requirements; flood regulations; traffic and trip generation; draft legal documentation and construction schedule;

- “Topographic Worksheet” (site plan) prepare by Little River Survey Company, LLC dated July 2013, as revised to include test pit locations January 2014;
- Enlarged aerial photo showing the location of the access driveway from the Bolton Valley Access Road to the proposed house site, and associated dimensions (length=1,600 feet, minimum width=15 feet, average slope =12.5%), and pull-off locations at the Bolton Valley gravel extraction area;
- Written description of the proposal titled ‘Harrington Residential Land Development- Single Family Home’ no date;
- Memorandum of Understanding between Catamount Trail Association and Phillip Harrington, dated 7/16/14 and 7/25/14;
- Site plan indicating location of pull-offs, no date
- Topographic Worksheet prepared by Little River Surveying Company LLC, last revised March 2014;
- Site Plan prepared by Little River Surveying Company LLC, last revised March 2014 (with pull-offs, building envelope, and setbacks);
- DRB Minutes from 9/24/15, 8/27/15, 6/23/15, 4/28/15, 3/24/15, 11/25/14, 10/28/14, 8/26/14, 7/22/14, 6/24/14.

The DRB hearing was continued to July 22, 2014 pending additional information from the applicant. The hearing was subsequently continued again to August 26, 2014, October 28, 2014, November 24, 2015, March 24, 2015, April 28, 2015, June 23, 2015, August 27, 2015, and September 24, 2015 pending additional information from the applicant. On September 24, 2015 the DRB adjourned the hearing, following the additional submission of testimony and evidence, marking the start of the 45-day period for the issuance of written findings and a decision.

Findings & Conclusions

The applicant’s request for conditional use approval was reviewed by the Bolton Development Review Board (DRB) for conformance with applicable requirements 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 District (Table 2.5)
- Section 3.2 Access
- Section 3.6 Lot, Yard, & Setback Regulations
- Section 3.9 Outdoor Lighting
- Section 3.16 Steep Slopes
- Section 3.17 Surface Waters and Wetlands
- Section 3.18 Water Supply and Wastewater Systems
- Section 5.4 Conditional Use Review
- Section 5.3 Site Plan Review (as incorporated and considered under Section 5.4)

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

Zoning District Standards (Table 2.5 Rural II District)

Conclusion: Based on the following findings, the proposed single family dwelling is a permitted use and complies with minimum district dimensional requirements and supplemental standards for the district in which it is located.

1. The existing lot is located in the Rural II District, as shown on the Bolton Zoning Map and Bolton Tax Map.
2. The minimum lot area for the Rural II District is 10 acres, and the minimum road frontage requirement is 300 feet. The existing lot, consisting of 3.7 acres, does not have frontage on a publicly maintained road, but is accessed from the Bolton Valley Access Road by an existing right-of-way over the "Broadway Trail". The existing lot predates zoning, and is therefore considered a legally established nonconforming lot.
3. Given the lack of frontage on a public road, pursuant to Section 3.6 (F), the minimum setback distance from all property lines shall equal the minimum district side yard setback of 35 feet. As indicated on the site plan, the proposed building envelope is setback at least 35 feet from all property lines.
4. Single family dwellings, as proposed, are allowed as permitted uses in this district.
5. The property contains steep slopes ($\geq 15\%$) and very steep slopes ($> 25\%$), subject to DRB review under Section 3.16 of the BLUDRs.
6. The property is bordered by Joiner Brook and an unnamed stream, subject to DRB review under Section 3.17 of the BLUDRs.
7. The designated building envelope, to include the proposed single family dwelling, , will be sited to meet dimensional setbacks, including the required 100-foot setback from Joiner Brook, and required 50foot riparian setback from the unnamed stream.

General Standards (under Article III)

Conclusion: Based on the following findings, the proposed subdivision will conform to applicable general standards under Article III of the regulations.

6. **Access (Section 3.2).** The existing parcel is accessed from the Bolton Valley Access Road by a 66' wide right-of-way (33' on each side of the driveway) extending over the Broadway Trail, as shown on the Site Plan prepared by Little River Surveying Company LLC, last revised March 2014.
7. Bolton Valley Resort, the Vermont Department of Forests, Parks and Recreation, the Town of Bolton, and the Catamount Trail Association also have shared legal right-of-way access to use the Broadway Trail.
8. The Applicant was unable to secure a shared maintenance agreement with the other right-of-way holders, but submitted a letter from the Catamount Trail Association regarding shared winter use of Broadway.
9. The Vermont Department of Forests, Parks and Recreation, in hearing testimony, reported the need for gated access to its land, to minimize unauthorized use of its trail networks and shelter vandalism.

10. The applicant has agreed to upgrade the existing Broadway Trail to B-71 Standards, as required under the regulations, to serve as both the driveway for the applicant's proposed residential structure and to maintain existing access for other legal users; and to install two 10' x 30' emergency pull-offs within his existing right-of-way, as indicated on the site plan.
11. The driveway access to the dwelling will also including turning radii sufficient to allow access to and from Broadway by town fire trucks, as shown on the site plan and reviewed by the Bolton Fire Chief.
12. **Steep Slopes (Section 3.16).** The lot to be developed contains steep slopes as defined under Section 3.16 of the regulations. The designated building envelope, as shown on the provided Site Plan, has been sited to avoid these areas.
13. **Surface Waters (Section 3.17).** The lot contains an unnamed stream and Joiner Brook. The designated building envelope has been sited to maintain a 100' setback from Joiner Brook and a 50' setback from the unnamed stream. At minimum, one-half of the required setback will be maintained as a naturally vegetated buffer and left in an undisturbed state.
14. **Water Supply and Wastewater Systems (Section 3.18).** The proposed single family dwelling will be served by potable water and a wastewater system as shown on the Site Plan prepared by Little River Surveying Company LLC, last revised March 2014. The potable water and wastewater system must be approved by the Vermont Department of Environmental Conservation in accordance with the Environmental Protection Rules as most recently amended. State permits must be secured prior to the issuance of a zoning permit by the Zoning Administrator.

Conditional Use Review (Section 5.4)

Conclusion: Based on the following findings, the DRB concludes that the proposed development, including converting the existing right-of-way over the Broadway Trail to access a single family dwelling, as indicated on the Site Plan prepared by Little River Surveying Company LLC, last revised March 2014, will have no undue adverse effect on the capacity of existing and planned community services and facilities, the character of the area affected, traffic on Bolton Valley Access Road, bylaws currently in effect, or the use of renewable energy resources.

13. **Community Facilities and Services.** The lot will be served by private onsite water and wastewater systems, a private water source, and local emergency services. The proposed single family dwelling will result in no additional demand on existing community facilities and services.
14. **Character of the Area.** This inholding, located off of Bolton Valley Access Road, is bordered by public land and resort holdings in what is largely an undeveloped area devoted to primarily to outdoor recreation. Though not specifically in keeping with adjoining uses, it is consistent with the character of the area, as defined for the Rural II District under Table 2.5, which allows for limited, compatible, lower densities of residential development that maintain Bolton's rural character.
15. **Traffic and Highways.** The proposed single family dwelling will not result in any significant increase in traffic on the Bolton Valley Access Road. The right-of-way serving the proposed single family dwelling will be required to be upgraded and maintained to meet B-71 Standards.

16. **Bylaws.** A town highway access permit may be required for residential use of the existing Broadway trail access.
17. **Energy Efficiency, Renewable Energy Resources.** The proposed single family dwelling will be required to meet current Residential Building Energy Standards (RBES). An RBES Certificate must be recorded in the Town Land Records prior to the issuance of a certificate of occupancy by the Zoning Administrator.

Site Plan Review (Section 5.3)

Conclusion: Based on the following findings, the DRB concludes that the proposed development, including converting the existing right-of-way over the Broadway Trail for the purposes of constructing a single family dwelling will meet the applicable general site plan review standards.

18. **Site Features.** The improved access and proposed single family dwelling have been designed and sited to avoid areas of steep slope, surface waters, and associated buffers.
19. **Site Layout and Design.** The proposed single family dwelling and associated residential improvements are consistent with the existing and desired character of the Rural II district and reinforces the rural character of the traditional working landscape of the district including wooded hillsides. The designated building envelope has been sited to minimize encroachments on prominent ridgelines and hilltops. The proposed single family dwelling will be designed in a manner that is compatible with the residential character and scale of existing development.
20. **Vehicular Access.** The proposed single family dwelling is accessed from the Bolton Valley Access Road via an existing curb cut and 66' wide shared right-of-way (Broadway Trail) leading to the property . The right-of-way will be required to be upgraded and maintained to B-71 Standard as required by the regulations to allow for emergency vehicle access. As noted, the Department of Forests, Parks and Recreation has requested a gated access which, if locked, could restrict access to the property by occupants of the dwelling, and emergency vehicles.
21. **Parking, Loading & Service Areas.** Site plan review standards regarding parking are applicable to this project. As specified under Section 3.11 (Parking, Loading, and Service Areas) single family dwellings are required to have two parking spaces per dwelling unit. The proposed driveway and 24' x 24' garage, to be located within the proposed building envelope, as shown on the site plan, will accommodate two cars.
22. **Outdoor Lighting.** All outdoor lighting installations are required to meet the general standards listed in Section 3.9 of the regulations and be kept to the minimum required for safety, security, and consistent with the character of the area in which is it located. The applicant indicated during the hearing that the only outdoor lighting will be affixed to the proposed residential structure and will not be directed upwards or be excessive.