



Town of Bolton Development Review Board

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

Mr. Joji W. Fillmore
Subdivision Amendment Approval
Application #2014-24-SD
May 4, 2016

Applicant

Mr. Joji W. Fillmore
4804 Santa Cruz Ave,
San Diego, CA 92107

Property: 2634 Stage Road (Lot 2, ID#07-0007.200)

Application

(Application materials on file at the Bolton Town Office)

The applicant, Joji Fillmore, has requested subdivision review and approval of a subdivision amendment (#2011-19-SD, amending #2010-23-SD) that was previously approved by the DRB on September 9, 2011, but for which no subdivision plat was ever recorded. The applicant requested approval to establish a residential building envelope for the construction of a single family dwelling on a previously approved 16.5-acre woodlot (Lot #2, ID#07-0007.200), to be accessed from the Stage Road via an existing, shared "woods road" that is also used by abutters for land access and logging. Lot #2 consists of a 16.5-acre woodlot with 629 feet of frontage along Stage Road and includes an intermittently used clearing (log landing area) for logging operations on the adjoining parcel, and an existing 16' x 16' equipment shed. The property is located at 2634 Stage Road in the Rural II District.

Lot #2 is currently accessed by logging road ("woods road"), established as a deeded right-of-way across the existing and adjoining lots, as more generally described in warranty deed from W.S. Preston to A. Johnson & Company dated June 9, 1961; as surveyed by the A. Johnson Company as shown on the recorded subdivision plat dated September 17, 2001 ("Preston Lot"); and as generally shown on the subdivision plat approved by the Development Review Board on October 13, 2010 and town tax maps. The applicant proposes to use a portion of this right-of-way as a driveway, as shown on the site plan ("Drive") to access the proposed building envelope and house site. A 50-foot utility easement granted to Vermont Electric Cooperative, Inc. also extends along the property bordering Stage Road, as shown on the site plan and the previously approved subdivision plat.

This application has been reviewed by the Bolton Development Review Board (DRB) as an amendment to an previously approved minor subdivision under the Bolton Land Use and Development Regulations (BLUDRs) as amended, effective August 9, 2010, including the applicable zoning district criteria (Table 2.5), general standards (under Article 3) and subdivision standards (Article 7). The Development Review Board's procedural history and relevant findings are attached.

Decision –Subdivision Amendment

- Denied**
 Approved
 Approved with Conditions:

The DRB hereby denies the subdivision amendment requested by the applicant, Joji Fillmore, as listed in the application and shown on Site Plan prepared by David Tudhope, Registered Land Surveyor #538, Project No. 769-1, Sheet 1, dated March 5, 2016, pursuant to the following applicable provisions of the Bolton Land Use and Development Regulations, as amended, August 9, 2010:

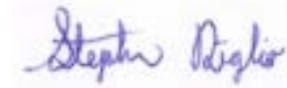
1. The Applicant failed to provide a subdivision plat indicating required information as listed under Article VII, Table 6.2 of the regulations – including elevation contours and the location of steep (15% to 25%) and very steep (25+%) slopes. As such the DRB cannot document or determine whether the building envelope as proposed excludes steep and very steep slopes in the vicinity of the proposed house site.
2. The proposed residential building envelope and driveway have not been located or configured to avoid adverse impacts to adjoining, productive forestland, in accordance with Article VII, Section 7.3(G)(1) and (2). In the absence of a long-term maintenance agreement, shared use of the existing logging access (woods road) as a residential driveway could result in unsafe conditions, and interfere with deeded access to adjoining parcels, including that owned by the A Johnson Company as required for long-term forest management. The proposed building envelope is also sited and located in an area near the existing landing that may lead to conflicts between the residential use of the land and forestry operations on this and adjoining parcels.
3. The Applicant failed to provide documentation and assurances that all required improvements, associated rights-of-way and easements, and other common facilities (i.e., the shared driveway/right-of-way) will be adequately maintained, as required under Article VII, Section 7.8(B) of the Bolton Land Use and Development Regulations (BLUDRs) as amended, August 9, 2010.

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

Stephen Diglio– deny
John Devine – deny
Charmaine Godin – deny
Sharon Murray – deny
Rob Ricketson – deny
Adam Miller – deny
Michael Rainville – absent

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

For the Development Review Board:



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.

Review Process

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

The application for final subdivision review and approval, and supporting information, was filed by applicant Joji Fillmore on August 27, 2014. The application was accepted 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 September 23, 2014 and warned by the Zoning Administrator in accordance with Section 9.8(D)(1) of the Bolton Land Use & Development Regulations (BLUDRs) and 24 V.S.A. § 4464.

The public hearing to consider the application was convened on September 23, 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:

- Joji W. Fillmore, Applicant 4804 Santa Cruz Ave., San Diego, CA 92107
- Maureen Matthews 2878 Stage Road, Jericho, VT 05465
- Bill O'Brien 26 W. Allen Street, Winooski, VT 05404
- Francis Joseph O'Brien 30 West Allen Street, Winooski, VT 05404
- Brennan Kelley 190 Stanford Road, Burlington, VT 05408
- A Johnson Company, LLC 995 South 116 RD, Bristol, VT 05443
(Represented by Tom Yager, Robert Fields and Benjamin W. Putnam, Esq.)
- Benjamin Putnam Esq. Neuse, Duprey & Putnam, 1 Cross Street, Middlebury, VT 05753

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

1. Application for final subdivision approval, dated 8/27/14, as referred by the ZA to the DRB on 9/5/14;
2. Tax Map showing location of parcel in relation to adjoining parcels;
3. Site Plan prepared by David Tudhope, Certified Site Technician (No. 230) dated 8/25/11;
4. Site Plan, enlarged, showing "Draft Building Envelope for Lot #2";
5. Survey plat for Lot #2, dated 8/20/10, as previously approved by the DRB on 10/13/10 and recorded in the land records of the town on 4/11/11;
6. Wastewater System and Potable Water Supply Permit (#WW-4-3579-1), issued by the Vermont Department of Environmental Conservation, dated 9/14/11;
7. Letter from Benjamin W. Putnam, Esq. to Bolton DRB c/o Miron C. Malbouef, Re: Fillmore application, Stage Road (2014-24-SD), dated 10/24/14;
8. E-mail correspondence from Mr. Fillmore, dated 11/19/14;
9. Notes from a voicemail message left by abutter Maureen Matthews on 11/25/14;
10. Letter from Joji Fillmore addressed to the DRB dated 3/12/15 (2 pages);
11. Handwritten letter from Joji Fillmore (applicant) with noted copy of Streeter Survey Plat, no date;
12. Draft Right-of-Way & Road Maintenance Agreement between the A. Johnson Co., LLC, Maureen Matthews, and Joji Fillmore (7 pages), no date, received 9/14/15;
13. Letter from the DRB to Joji Fillmore dated 9/30/15;
14. Email Correspondence from Joji Fillmore to Sarah McShane (others copied), Re: 2634 Stage Road, Fillmore Property, dated Sat. January 9, 2016 at 3:41 PM;
15. Draft Right-of-Way & Road Maintenance Agreement between the A. Johnson Co., LLC, Maureen Matthews, and Joji Fillmore (8 pages); no date; received 9/14/2015;
16. DRB Decision #2010-23-SD (Streeter Minor 2-Lot Subdivision), dated October 13, 2010;
17. Letter from Bolton DRB to Joji Fillmore, dated September 30, 2015;
18. Warrant Deed of J. William O'Brien and Phyllis O'Brien dated March 4, 1998, submitted by Bill O'Brien on January 28, 2016;
19. Letter to Ron Lafreniere, Chair, Bolton Select Board, from F. Joseph O'Brien, Re: Request to Lay Out Lumber Road, dated January 28, 2016;
20. Copy of Site Plan prepared by David Tudhope, Site Technician #230, Project No. 769, Sheet 1, dated 8/25/2011;
21. Site Plan prepared by David Tudhope, Registered Land Surveyor #538, Project No. 769-1, Sheet 1, dated March 5, 2016;
22. Email Correspondence from Joji Fillmore to Sarah McShane, Fw: Fillmore Plat Page 2, dated Thursday March 10, 2016 at 3:11 PM;
23. Letter from Benjamin W. Putnam, Esq. to Bolton DRB, Re: Application 2014-24-SD, Fillmore Subdivision Amendment, dated March 23, 2016.

The DRB hearing was continued to October 28, 2014 pending additional information from the applicant. The hearing was subsequently continued to November 25, 2014, January 27, 2015, February 24, 2015, March 24, 2015, September 24, 2015, January 28, 2016, and March 24, 2016 pending additional information from the applicant. A site visit was held by the DRB on the property on October 31, 2015. On March 24, 2016 the DRB adjourned the hearing, at the request of the applicant, following the submission of additional 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 amended subdivision approval for Lot #2 of a previously approved two-lot subdivision was reviewed by the Bolton Development Review Board (DRB) for conformance with prior conditions of subdivision approval and applicable subdivision review standards (Article VII, Sections 7.2, 7.3, and 7.6) of the Bolton Land Use and Development Regulations (BLUDR) in effect at the time of application. DRB findings and conclusions under each of these applicable standards are presented as follows.

Conditions of Prior Subdivision Approval (#2010-23-SD)

1. Condition #6 of the subdivision approval creating this lot, as granted by the DRB on October 13, 2010 states that: "Subsequent development on approved lots is subject to all applicable requirements of the Bolton Land Use and Development Regulations in effect at the time of application. The designation of a building envelope on Lot #2, to be approved by the Bolton Development Review Board, is deferred until such time as development is proposed on the lot."

Conclusion: In fulfillment of this condition, the applicant proposed a designated building envelope for the construction of a single-family dwelling and associated accessory structures and parking, as shown on the revised site plan, dated March 5, 2016, submitted with the application.

Section 7.2(E) Building Envelopes and 7.3 (Protection of Natural & Cultural Resources)

2. The following natural resources under Section 7.3 were identified on the property, as shown on the revised site plan submitted with the application:

- An intermittent stream, to be protected by a 25-foot vegetated buffer along each bank, as required under prior conditions of subdivision approval,
- Productive forestland, including deeded use of the right-of-way across the parcel (woods road) and log landing (clearing) by the A. Johnson Company for commercial logging operations on their adjoining parcel, dating from 1961 to the present.

3. The Board conducted a public site visit on October 31, 2015 in which Steep (15%-25 %) and very steep (>25%) slopes were evident over much of the parcel. The location of steep and very steep slopes were not identified on the site plan provided, but were evident during the public site visit. Based on the site visit, it appeared that portions of the designated building envelope included steep and very steep slopes.

4. The building envelope as shown on the revised site plan excludes the intermittent stream and stream buffer area.

5. The building envelope is configured and sized to limit the extent of forest clearing on the parcel, however is located in an area used for logging and forest management activities.

Conclusion: Based on the information provided during the public hearings and evident during the public site visit, the Board concludes that the proposed building envelope as shown on the revised site plan has not been properly located to exclude and protect steep and very steep slopes, or minimize use conflicts

between existing forest management and logging operations and the proposed residential use of the property.

Section 7.6(A) Access

6. The applicant proposes to use the existing highway access (curb cut) on Stage Road as shown on the site plan, and as previously approved by the Town of Bolton.
7. The BLUDR Section 3.2 requires that residential driveways must meet minimum driveway standards [Section 3.2(E)], including the following:
 - State B-71 standard for residential drives, which established a minimum driveway width of 12 feet.
 - The average finished grade cannot exceed 15% over any 50-foot section.
 - Given the driveway is longer than 500 feet, it must include at least one 10-foot by 30-foot pull off area, and a “Y” or “T” turnaround at the end for use by emergency vehicles.
8. The property is burdened by an easement benefitting an adjacent property for logging purposes, currently owned by A. Johnson Co., LLC (AJCO).
9. The exact location of the deeded logging right-of-way, as previously surveyed and generally shown on the site plan and town tax map, is not clearly shown as surveyed on the current subdivision plat. According to testimony, the surveyed right-of-way of record may have been relocated when the house was constructed on Lot #1, prior to subdivision.
10. Based on submitted materials and testimony, the Board is unable to locate the exact easement location.
11. During the public hearing, AJCO provided written testimony that the proposed residential use of the property would inhibit and interfere with existing forest management and logging activities on the adjacent parcels, and interfere with their ability to use the easement.
12. Pursuant to BLUDR Section 7.8(B), the Board requested the interested parties submit a shared maintenance agreement identifying the exact easement location and agreeing to future maintenance responsibilities. The purpose was to ensure the siting of a safe building envelope, that did not conflict with the burdened easement, and attempted to prevent future disputes regarding driveway maintenance arising from logging and residential use. At a minimum, the Board required the Applicant, Mr. Fillmore, to assume all maintenance responsibility.
13. The applicant and other interested parties to this application were unable to negotiate a legally binding right-of-way and road maintenance agreement that identified the easement location, specified shared use of the right-of-way, or specified the responsibilities of each party for long-term right-of-way maintenance as required under Section 7.8(B) of the BLUDR's.
14. Mr. Fillmore failed to submit any maintenance agreement, including one assuming all maintenance responsibility.

J. Fillmore
May 4, 2016

Application # 2014-24-SD
Subdivision Amendment (Building Envelope)

Conclusion: Based on the information provided during the public hearings, the Board concludes that the applicant was unable to demonstrate compliance with the access and legal requirements as listed in Section 3.2 and Section 7.8 of the BLUDR's, including siting the building envelope without conflicting the AJCO easement, siting the building envelope in a safe location, and providing a legal means of maintaining the shared portions of the right-of-way to be used for logging, forest management, and residential uses.