



# Town of Bolton Development Review Board

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

Sharon Murray and Robert Fett (Applicants / Owners)  
Conditional Use Review - Application #2020-05-CU  
March 26, 2020

## Applicant

Sharon Murray and Robert Fett  
3249 Duxbury Rd.  
Waterbury, VT 05676

**Property:** 3249 Duxbury Rd., Bolton

## Application

(Application materials on file at the Bolton Town Office)

The Applicants request Conditional Use approval to remove 3 hazardous trees on their property within the 100 ft. Gleason Brook buffer and stabilize its streambank, per Section 3.17 of the Bolton Land Use and Development Regulations. The parcel is located at 3249 Duxbury Rd., Bolton in the Rural 1 district and Flood Hazard Overlay District II (parcel ID 15-0013249).

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 January 7, 2019, including applicable zoning district criteria (Tables 2.4 and 2.8), Surface Waters and Wetlands (Sec. 3.17), Conditional Use Review (Sec. 5.4) and Flood Hazard Review (Sec. 5.5).

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

## Decision –Conditional Use Approval

- Denied
- Approved
- Approved with Conditions:

1. Applicants may proceed with removal of 3 hazardous trees within 100-ft. buffer of Gleason Brook, as indicated in conditional use application, site plan and photographs attached to that application. Tree stumps shall be left intact, to maintain integrity of streambank and enhance soil retention.
2. Approval of the proposed streambank stabilization to protect Applicants' leach field is conditional on securing a DEC stream alteration permit. If obtained, Applicants shall file a copy of the State of Vermont DEC approval with the Zoning Administrator prior to commencement of this work.
3. Any other required state and federal permits and approvals must be obtained with copies to the Zoning Administrator, including written comments and recommendations from the Flood Hazard Specialist, requested but still pending at this writing.

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

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

Stephen Diglio – yes                      Adam Miller – yes  
Rob Ricketson – yes                      John Devine -- yes

**Dated at Bolton, Vermont this 26<sup>th</sup> day of March, 2020.**

**For the Development Review Board:**



Adam Beaudry, Vice -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 for conditional use approval was filed by Sharon Murray on January 23, 2020. The application was accepted as administratively complete by Bolton Zoning Administrator Larry Lewack and referred to the Bolton Development Review Board for a public hearing. A public hearing of the DRB was

scheduled for February 27, 2020 and warned in accordance with Section 9.8(D)(1) of the regulations and 24 V.S.A. § 4464.

The public hearing to consider the application was convened on February 27, 2020, 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 the hearing process, and may be afforded status as interested persons with rights to appeal:

- Sharon Murray and Robert Fett, Applicants, 3249 Duxbury Rd., Waterbury VT 05676
- Julia Bunting and Nick Donowitz, 133 Heritage Ln., Shelburne VT 05482 (did not testify)
- Rick Weston, 1811 Happy Hollow Rd., Bolton VT 05477 (did not testify)
- John Stuart, P.O. Box 8367, Essex. VT 05451 (did not testify)

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

1. Conditional Use Hearing Request (2020-05-CU), dated 1/23/20
2. Location / Tax Map, dated 1/23/20
3. Orthophoto indicating area of trees to be removed, dated 1/23/20
4. Photos documenting trees to be removed, streambank erosion, dated 1/23/20
5. Tree removal estimate from Barrett's, dated 1/23/20

The DRB closed 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 & 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 (BLUDRs) in effect as of January 5, 2005, and amended through January 7, 2019, including the following:

- Table 2.4 – Rural 1 District Standards
- Table 2.8 – Flood Hazard Overlay District standards
- Section 3.17 – Surface Waters and Wetlands
- Section 5.4 – Conditional Use Review
- Section 5.5 – Flood Hazard Review

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

### **Zoning District Standards (Table 2.4, Rural 1 District)**

**Conclusion:** Based on the following findings, the DRB has determined that the project, as shown on site plan submitted with the application, is within a nonconforming lot with respect to the dimensional standards for the Rural 1 District in which it's located. However, because no new construction is proposed, the DRB finds this project does not increase the extent of this lot's nonconformance.

1. **Lot Area.** The property is approximately .5 acre; minimum lot size in district is 2 acres.

2. **Frontage.** The property has 110 ft. of frontage on Duxbury Rd.; this does not meet the current minimum district road frontage requirement of 200 feet.
3. **Setbacks.** Existing single family dwelling is within 35 foot front yard setback, and within the 35 ft. west side yard setback. There is also an existing outbuilding behind the house, somewhat closer to Gleason Brook at its east edge. No structural alterations to buildings are proposed.
4. **Building and Lot Coverage.** The existing and proposed improvements and impervious surfaces total approximately 3000 ft<sup>2</sup> or 14%. The maximum building and lot coverages in this district are 30% and 60% respectively.
5. **Use.** Single family dwellings and accessory structures are permitted uses in this district.

**Zoning District Standards (Table 2.8, Flood Hazard Overlay District II):**

**Conclusion:** Based on the following findings, the DRB has determined that the project, as shown on the site plan submitted with the application, is partly within Flood Hazard Zone AE & thus subject to the supplemental district standards for this district. However, because no new construction (tree removal and streambank stabilization only, if approved by the state of Vermont) is proposed within the Flood Hazard Zone, the DRB finds this project meets district standards.

1. **Lot Area, Frontage, Setbacks, Building and Lot Coverage:** *(not applicable; as enumerated above for the Rural 1 district)*
2. **Use.** Existing single family dwellings and accessory structures are permitted uses in this district; no uses prohibited under 2.8.E. sec. 4 and 5 are proposed within the context of this project. *(See Sec. 5.5 discussion below for how Flood Hazard Review standards were applied.)*

**Section 3.17 (Surface Waters and Wetlands):**

**Conclusion:** Based on the following findings, the DRB has determined that the project, as shown on the site plan submitted with the application, meets the criteria for permitted encroachments at Sec. 3.17.F for bank stabilization and restoration projects. With respect to the proposed tree removal within the Gleason Brook setback, Applicant provided evidence that:

- Two arborists & the County Forester inspected the trees and stated that they needed to come down, as they are susceptible to catastrophic failure in storm events which would threaten the existing leach field and structures on the property.
- Smaller trees will need to be removed for tree removal equipment.
- They are trying to keep as many trees standing within the stream buffer as possible.
- The brook bank near the pine tree is being undercut by the brook.

With respect to the streambank stabilization of Gleason Brook, Applicant provided evidence that:

- Increased runoff and fluvial erosion during recent storm events (such as on 10.31.2019) have undermined the streambank upstream and along the edge of their property, resulting in the ongoing loss of vegetative buffer, including several large trees, significant bank erosion, and damming and sedimentation downstream, particularly at the mouth of the brook. They need to take action soon, due to brook endangering their septic system when in flood stage.
- Any stabilization of the stream bank will require a stream alteration permit from the state.

- Stabilization will require placing very large riprap in a small area to protect the leach field. Estimated cost of \$20K – \$30K.
- DRB approval could be pending receipt of permit from the state, then submitted to the PZA for review (the town has secondary jurisdiction, just to ascertain that the state permit is in place).
- It was noted that no buildings were involved, no impervious surface would be impacted, with no increase in risk to upstream or downstream property, if this project were implemented as proposed.

The DRB finds that, if these two projects are implemented as proposed, per the guidelines likely to be required in DEC permits for the streambank alteration permit, surface runoff, channeling and soil erosion will be minimized as required.

**Sec. 5.4 (Conditional Use Review):**

**Conclusion:** Based on the following findings, the DRB has determined that the project, as shown on the site plan submitted with the application, meets conditional use criteria as follows:

- 1) **Capacity of community services or facilities:** Proposed tree removal and streambank stabilization within the Gleason Brook setback and buffer area, located just downstream of the town highway culvert on Duxbury Road outside of the right-of-way, will not affect the culvert or other community facilities and services.
- 2) **Character of the area affected:** Given local topography and floodplain access across the stream, both projects will not affect adjoining or upstream properties.
- 3) **Traffic on roads & highways in the vicinity:** Proposed projects are outside of the town right-of-way and, as noted above, will not affect the Duxbury Road or highway culvert on Gleason Brook.
- 4) **Bylaws in effect:** DRB review and conditional use approval under Section 3.17 (Surface Waters and Wetlands) is required for vegetation removal and streambank stabilization within the 100-foot vegetated buffer along Gleason Brook. (*See Sec. 3.17 findings above.*)
- 5) **Utilization of renewable energy resources:** no impact.
- 6) **Conformance with the Town Plan:** As noted in the 2017 Bolton Town Plan, current stream setback and buffer requirements were never intended to directly address fluvial erosion -- roads, culverts and homes in river and stream corridors remain at risk of damage. Homeowners along Gleason Brook are now experiencing this risk first hand, with significant washouts directly upstream of the project that have resulted in FEMA buyout proceedings.
- 7) **Zoning district and use standards:** (*See findings for Table 2.4 and 2.8, above.*)
- 8) **Performance standards:** no impact.
- 9) **Legal documentation:** Applicant attests that required DEC streambank alteration permit will be submitted to Zoning Administrator prior to commencing any streambank stabilization work.

**Sec. 5.5 (Flood Hazard Review):**

**Conclusion:** Based on the following findings, the DRB has determined that the project, as shown on the site plan submitted with the application, complies with the requirements of Flood Hazard Review.

- 1) Site plan shows extent of Zone AE floodway, roads, water supply and wastewater facilities.

- 2) Because no new construction or modifications to existing buildings are proposed, sec. 5.5.D.3.-5. do not apply. Per June 1998 letter from FEMA recorded in Vol. 52, p. 92 of the Bolton Land Records, the existing dwelling and accessory structure are not within Zone AE, thus no base flood building elevation certificate is required for this application.
- 3) Conditions for proposed streambank and channel alterations will be addressed in DEC permit, if approved.
- 4) Cost estimates for proposed tree removal and streambank alteration work have been provided by the applicant.
- 5) No new structures are proposed to be sited. No prohibited uses (Sec. F.2) are proposed.
- 6) The proposed project will not result in any increase in flood levels during a base flood, alter the flood carrying capacity of Gleason Brook, or increase risk to surrounding properties, facilities or structures from flooding within the floodway, per Sec. 5.5.F.3.
- 7) NFIP Coordinator (Flood Hazard Specialist) feedback is pending & will be attached to the application record, once received.