

Town of Bolton  
Development Review  
Board

3045 Theodore Roosevelt Highway  
Bolton VT 05676  
802-434-5075

In re: **DDJG Property Ventures, LLC**  
**Access and Conditional Use Approval**  
August 9, 2006

## FINDINGS AND DECISION

### INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involved the review of an application by DDJG Property Ventures LLC, David Dubrul and Jeff Garfield Landowners/Applicants, for approval under:
  - Sections 3.16 (Steep Slopes) and 5.4 (Conditional Use Review) of the Bolton Land Use and Development Regulations (BLUDR) for the construction of a single family dwelling and attached garage, detached barn and driveway on slopes in excess of 25%; and
  - Section 3.2(B) of the BLUDR as required to access a pre-existing lot lacking frontage on a public road or public waters.

The lot in question is a pre-existing 37.5 acre lot (Tax Map Parcel ID #4090579) located in the Rural I (RI) and Rural II (RII) Zoning Districts, accessed from Route 2 via private rights-of-way including Green Mountain Drive and Champ Lane.

2. A sketch plan determination of the applicant's initial proposal for an 8-lot subdivision of the parcel, issued by the Bolton Development Review Board (DRB) on May 18, 2006, indicated that due to steep slope conditions, the subdivision as proposed would not conform to the prohibition of development on slopes in excess of 25% under Section 3.16 of the BLUDR. It was noted in the DRB's determination, however, that this section of the regulations does allow for development on slopes in excess of 25%, subject to conditional use review, on pre-existing lots legally in existence as of the effective date of the regulations (January 26, 2005) if the DRB found that the total prohibition of development on slopes in excess of 25% would unduly preclude reasonable use of the lot, which could include the construction of a single family home. It was also noted that, in order to approve such a use, the DRB would have to find that the application addressed and applicable requirements of the regulations including, but not necessarily limited to:
  - conditional use approval criteria under Section 5.4 (Conditional Use Review) including applicable site plan approval criteria (Section 5.3);
  - requirements for development on steep slopes (Section 3.16), including a demonstration that the building envelope and access are located to minimize, to the extent feasible, site disturbance within areas of very steep slope (>25%), and that adequate stormwater management and erosion control will be provided for disturbed areas, building sites and access in accordance with a plan to be approved by the Board; and
  - requirements for access to pre-existing, nonconforming lots (Section 3.2), including the statutory and regulatory requirement for access to such lots via rights-of-way at least 20 feet in width.

3. An application for conditional use and access approval was subsequently received at the Bolton Town Office on June 27, 2006 and referred to the DRB. A copy of the application is available at the Bolton Town Office.
4. On July 1, 2006, notice of a public hearing for access approval was posted at the following places:
  - a. The Bolton Town Office
  - b. DDJG property within view of Route 2, the public-right-of-way most adjacent to the property for which the application was made.
  - c. The Bolton Store
  - d. The Jonesville Post Office
  - e. Smilie Memorial School.
5. On July 1, 2006, a copy of the notice of a public hearing was mailed to the applicant.
6. On July 1, 2006, a copy of the notice of public hearing was mailed to six adjoining property owners, based on names and addresses provided by the applicants: Blows, Guyettes, Green Mountain Power Corporation, VELCO, Green Cow Corp, Fernwood Manor/Vermont State Housing Authority (on file at the BoltonTown Office).
7. The notice of public hearing appeared in the Burlington Free Press on July 2, 2006.
8. The application was considered by the DRB at the warned public hearing on Wednesday, July 19, 2006. The DRB reviewed the application under the Bolton Land Use & Development Regulations, as adopted January 5, 2005 (effective date January 26, 2005).
9. Present at the hearing were the following members of the Development Review Board, representing a quorum of the board:
  - Sharon Murray, Chair
  - Jerry Chabot
  - Michael Rainville
  - Michael Hauser, Alternate
  - Rob Heimbuch, Alternate
10. At the outset of the hearing, DRB afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. §4465(b) to demonstrate that the statutory criteria for “interested persons” could be met. It was determined for the record that the following met the criteria for interested person status and retain the right to appeal any decision of the DRB under these proceedings:
  - DDJG Property Ventures LLC/David Dubrul and Jeff Garfield (Applicants) 29 Rail Road Colchester, VT 05446
  - Thomas & Marcia Guyette (Abutter) 3682 Waterbury Stowe Road, Waterbury Center, VT 05677
  - Mark & Tina Atwood (Abutter), 95 Champ Lane, Bolton, VT 05676
11. All testimony was presented under oath as administered by the Chair. During the course of the hearing the following exhibits were submitted to the Development Review Board, which are on file and available at the Bolton Town Office:
  - The application form, dated 6/27/06, and abutter list.
  - Site Plan (Sheet 1 of 3) prepared by Chenette Associates, P.C./Bernard X. Chenette, PE (State Registration No. 3560), dated 2/23/06, including a location plan (inset) and showing the location of the proposed building envelope (as delineated at the hearing) dwelling, barn, access drive, well and septic area, existing easements, existing and proposed elevation contours, and proposed

- stormwater management and erosion control measures including stone retaining walls, level lip spreaders, stone lined swales and check dams, and matting, and match line to Sheet 2.
- Site Plan & Details (Sheet 2 of 3) prepared by the above and dated 2/23/06, showing the match line to Sheet 1, the location of the access driveway and easement across the Guyette Property to Champ Lane, and the details of proposed erosion and sediment control measures, including profiles, plan views, specifications and notes (contractor requirements).
  - Details Sheet/Septic Design (Sheet 3 of 3) prepared by the above and dated 2/23/06, showing the septic system design, including tank specifications, cross section and plan views of absorption trenches, test pit data and installation requirements.
  - A letter dated July 6, 2006 from Thomas and Marcia Guyette (abutters) indicating that they had no objection to the plan as proposed, but would like to retain their status as interested persons in the event that there are any changes to the plan.
  - A letter dated July 17, 2006 from Mark and Tina Atwood (abutters) indicating their ongoing concerns about use of the right-of-way (Champ Lane) given the amount of existing traffic, responsibilities for right-of-way maintenance, and the effect of the proposal on the water supply source protection area for the mobile home park (Fernwood Manor).
12. The Board determined that the application, information and testimony submitted at the hearing was sufficiently complete to make findings under applicable regulatory criteria, and indicated before the close of the hearing their intent to approve the application (4-1) with conditions, to be specified in the written decision.
13. The hearing was adjourned on July 19, 2006, requiring the issuance of a written decision by the Development Review Board by September 2nd, 2006 in order to meet the 45-day statutory requirement. The Board voted to enter deliberative session on July 19<sup>th</sup>, 2006 to consider findings and conditions of approval for the issuance of the written decision.

## FINDINGS

Based on the application, testimony, exhibits, and other evidence submitted, the Development Review Board makes the following findings:

### Site Conditions

1. The applicant seeks conditional use approval from the DRB to construct a single family dwelling, attached garage, detached barn, access driveway, and water supply and wastewater disposal systems on slopes in excess of 25%. The applicant also seeks DRB approval for access to the parcel which lacks frontage on a public road or public waters.
2. The subject parcel is a pre-existing, nonconforming 37.5 acre parcel located in the Rural 1 (~12.5 acres) and Rural 2 (~25.0 acres) Districts. The parcel currently meets district dimensional standards, with the exception of road frontage requirements. It may be accessed from Route 2 via private rights-of way from Green Mountain Drive (50-feet in width), or from Champ Lane across the Atwood and Guyette properties (16.5-, 30- and 50 feet in width) as shown on the site plan. There are also two existing transmission line easements extending across the property, including a 150-foot wide VELCO easement, and a 100-foot wide Green Mountain Power Corporation easement, as shown on the site plan.
3. The entire parcel consists of steep and very steep terrain as defined in the BLUDR (Section 3.16), with slopes equal to or in excess of 15%. Much of the land, as shown on the site plan and shaded slope map presented at the hearing, consists entirely of slopes in excess of 25%. The parcel is

forested and currently undeveloped except for an existing skid road that has been used for recent logging operations. No other significant natural or cultural features were identified on the site plan.

4. The locations of the dwelling, accessory structure, access road, well and septic systems will be confined to the R1 District, and will necessarily involve the disturbance of slopes in excess of 25%. The proposed access driveway and septic system area are located partially within existing utility easements on the parcel, as shown on the site plan.

### **Steep Slopes (Section 3.16)**

5. The development necessarily involves the disturbance of very steep slopes (>25%) which is prohibited under Section 3.16, except for development on pre-existing lots legally in existence as of the effective date of these regulations (January 26, 2005) for which the Board determines that this prohibition would effectively preclude any reasonable use of the property. The lot in question was in existence as of January 26, 2005, qualifying it for consideration under this exemption.
6. The Board has determined, based on the site plan and testimony presented at hearing, that because of the topography, there is no portion of the lot that could be developed without disturbing slopes in excess of 25%, that a single family dwelling represents a reasonable use of the 35.5 acre property, and that the proposed location of the designated building envelope, access driveway, and septic system areas will minimize, to the extent feasible, the disturbance of slopes in excess of 25%.
7. Stormwater management and erosion control plans, as submitted, meet applicable requirements of the regulations. The applicant submitted a stormwater management and erosion control plan designed by Mr. Chennette, a professional engineer certified by the state, as shown and detailed on Site Plan Sheets 1 and 2. The plan incorporates accepted management practices, designed for a 10-year storm event, to prevent runoff, erosion, slumps, and other downslope movement, and to minimize associated risks to surface and groundwater, public facilities and roads, and adjoining properties. These include stone retaining walls, level lip spreaders, stone lined swales and check dams, erosion control matting, enlarged culverts, silt fencing, and installation requirements, as shown on the site plan.
8. According to testimony presented by Mr. Chennette, culvert installation, including the installation of a larger replacement culvert that drains onto the Guyette property, will not substantially increase the flow of water onto adjoining properties.
9. The applicant will install the access road, including associated stormwater management and erosion control measures, for sale of the lot with permits and approvals. The buyer will be responsible for building construction and septic system installation according to design specifications, and for ongoing stormwater and septic system management and maintenance. The DRB agreed to a recommendation from Dick Ward, Bolton Zoning Administrator, that a professional engineer, registered by the state, should certify that all improvements have been installed as designed and approved by the DRB prior to the issuance of a certificate of occupancy.
10. The development shall be sited at an elevation, within a forested area, that should minimize any visual impacts from public vantage points. The access driveway, for much of its length, will share existing utility corridors.

**Conditional Use Approval (Section 5.4)**

11. As a single family dwelling the development, as proposed, will have no undue adverse effect on the capacity of existing or planned community services or facilities. The dwelling unit will be served by private, on-site water and wastewater systems. All areas of site disturbance and development, including water and wastewater system areas, are located outside of the source protection area for the Fernwood Manor water supply system. The access driveway shall not exceed a finished grade of 15%, and will include pull-off and turnaround areas for emergency vehicles, as depicted on site plans.
12. The development as proposed will have no undue adverse effect on the character of the area. The proposed dwelling and accessory structure (barn) are located in the Rural I District, which is considered suited for moderate density residential development in a manner that maintains the town's rural character (see BLUDR, Table 2.4). Only a small portion of the 37.5 acre parcel will be developed for residential use; the remainder will remain in forest.
13. The development as proposed will have no undue adverse effect on traffic on roads and highways in the vicinity. The applicants propose to access the development from Champ Lane rather than Green Mountain Drive in order to minimize the amount of site disturbance necessary to access the house site. While concerns were noted by the DRB and abutters regarding the use of Champ Lane (a 16.5-foot right-of-way) to access Route 2, it is not anticipated that a single family dwelling that generates less than 10 trips per day will result a significant increase in the amount of traffic using this road, and that this alone should not preclude limited use of the parcel. Access approval from the Vermont Agency of Transportation may be required, given that the development must also access Route 2.
14. The development will comply with all bylaws in effect at the time of application. The applicant has indicated that they will also require water and wastewater system approvals, and a general construction permit from the state (as required for 1.7 acres of disturbance). As noted, access approval from the Vermont Agency of Transportation may also be required for use of Champ Lane to access Route 2. Mr. Chenette stated he would look into this on behalf of the applicant.
15. The development as proposed will have no undue adverse effect on the utilization of renewable energy resources. Only 1.7 acres of 37.5 acres of forested land will be disturbed by the development. No other known sources of renewable energy, other than solar energy, are located on site.
16. Single family dwellings are normally exempted from site plan review. Findings under applicable site plan review criteria include the following:
  - Site layout and design, to the extent feasible, protect existing site features, including areas of steep slope and surface waters, while allowing for reasonable use of the parcel. The designation of a building envelope, as delineated on the site plan during the hearing, was required by the DRB to limit the area of site disturbance and to restrict the location of buildings and parking areas on the parcel.
  - Site layout and design preserve the rural character and traditional landscape of the R1 district, including its wooded hillsides. Only 1.7 acres of 37.5 acres of forest land will be disturbed by the development. The dwelling will be sited to avoid prominent ridgelines and hilltops.

- Vehicular access to the property meets B-71 standards for residential driveways, as specified under Section 3.2 (E) of the BLUDR. The applicant agreed to increase the depth of surface gravel from 2” as shown on the site plan, to 3” as stated in the B-71 specifications. The finished grade shall not exceed 15% within any 50-foot section, and required pull-off area and turn around areas will be installed as shown on the site plan.
- An attached garage and parking area will provide on-site parking for two vehicles; all parking areas are located within the designated building envelope.
- Any outdoor lighting must meet the requirements of Section 3.9 of the BLUDR.
- The stormwater management and erosion control plans as submitted meet applicable requirements under Section 3.16 of the BLUDR (see above).

### Access Approval (Section 3.2)

17. The subject property is a pre-existing, nonconforming lot legally in existence as of January 26, 2005 that lacks frontage on a public water or maintained public road, and is therefore subject to DRB review and approval under Section 3.2(B) of the BLUDR.
18. Two existing rights-of-way provide access to the property from Route 2, including a 50-foot right-of-way extending from Green Mountain Drive, and a second right-of-way extending from Champ Lane that varies in width from 16.5 to 50 feet in width and extends across property owned by the Atwoods and Guyettes, as shown on the site plan. Due to site and slope conditions, the applicant has proposed accessing the property from Champ Lane.
19. A letter dated July 17, 2006 from Mark and Tina Atwood states their concern about the use of Champ Lane to access the property, given the amount of existing traffic, and also responsibilities for right-of-way maintenance.
20. The DRB finds that a single family dwelling will not substantially increase traffic on Champ Lane and, given site constraints, agrees to waive the minimum right-of-way width requirement of 20 feet under Section 3.2, in order to allow for limited, reasonable use of the property. The driveway has been designed to meet B-71 standards for residential drives.

### DECISION AND CONDITIONS

**Based upon these findings, and subject to the conditions set forth below, the Development Review Board votes (4–1) to grant conditional use and access approval.**

Members voting in favor of conditional use and access approval: Jerry Chabot, Michael Rainville, Michael Hauser (Alternate), Rob Heimbuch (Alternate)

Against: Sharon Murray (on findings #13, #20 pertaining to access).

The Development Review Board, in order to allow for reasonable use of the property under Section 3.16 of the BLUDR (Steep Slopes), hereby approves the development of a single family dwelling, accessory structure (barn) and access drive as shown on the site plan, subject to the following conditions:

1. Given slope conditions, no subsequent subdivision of the parcel for purposes of development shall be allowed in accordance with Section 3.16 of the regulations.
2. All structures and parking areas shall be located within the building envelope designated on submitted site plans, as approved by the DRB. No site disturbance shall occur outside of the designated building envelope or delineated limits of disturbance for access and septic system areas as shown on the site plans.
3. Any subsequent modifications or improvements within the designated building envelope (e.g., additions, decks) shall require only administrative review and the issuance of a zoning permit. Any modifications or improvements proposed outside of the building envelope, including site clearing, or the relocation of the access drive beyond approved limits of disturbance as shown on the site plan shall require conditional use review and approval by the Development Review Board.
4. Stormwater management and erosion control measures shall be designed and installed as specified and shown on submitted site plans, and shall be maintained by the property owner. The applicant is responsible for obtaining necessary state construction permits.
5. The access drive, pull-off and turnaround shall be installed as specified on submitted site plans, with the exception of the requirement for a 3" gravel surface (rather than 2" as shown) in accordance with B-71 standards. Finished grades shall not exceed 15% within any 50-foot section.
6. In accordance with Section 3.2(B) the following conditions shall apply to the access as approved:
  - a. Existing and subsequent owners of the property shall have the responsibility to maintain the extent of the right-of-way from Route 2, including the driveway, pull-off and turn around areas, for year-round access by emergency vehicles.
  - b. The town shall not provide school bussing beyond maintained public roads that serve the property (Route 2).
  - c. Use of the property accessed by this right-of-way is limited to one principal use or structure (a single family dwelling), and associated accessory uses and structures allowed within the R1 District.
7. In accordance with Section 3.2 (C), the applicant shall obtain access approval from the Vermont Agency of Transportation as required to access Route 2.
8. In accordance with Section 3.9 (Outdoor Lighting), outdoor lighting shall be kept to the minimum required for safety, security and intended use. Permanent outdoor lighting fixtures shall not direct light upward or onto adjoining properties or roads, or result in excessive lighting levels. Fixtures shall be cast downward or be designed to minimize glare, and may include recessed, shielded or cutoff fixtures, or low luminance lamps. Timers, dimmers and/or sensors are recommended to reduce energy consumption and eliminate unnecessary lighting.
9. In accordance with Section 3.18 (Water Supply & Wastewater Systems), water supply and wastewater systems shall be designed and installed as specified and shown on the site plan, in accordance with Vermont Environmental Protection Rules currently in effect. The applicant is responsible for obtaining necessary state permits.

10. A certificate of occupancy for the dwelling shall not be issued by the Administrative Officer under Section 9.4 of the regulations until it has been confirmed that:
- a. All required deeds and easements, including access easements, have been recorded in the town land records.
  - b. Stormwater management and erosion control measures have been installed as approved, inspected and certified in writing by a professional engineer licensed by the state.
  - c. The applicant provides certification from a professional engineer or site technician licensed by the state that the wastewater has been installed as approved by the town and/or state.
  - d. All other applicable permits and approvals have been obtained.

Dated at Bolton Vermont, this 9<sup>th</sup> day of August, 2006.

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Sharon Murray, Chair      Bolton Development Review Board

**NOTICE:** This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceedings 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 Court Proceedings.