



Beam Lot Line Adjustment

DECISION ON MOTIONS

In this matter, Russell Hodgkins, David Judd and Christopher Potter (together, Appellants) appeal a decision of the Town of Westminster (Town) Development Review Board (DRB) upholding a decision by the Town Zoning Administrator approving a boundary line adjustment of abutting properties owned by Norman and Elaine Beam and Buck Adams (together, Applicants), respectively, related to their properties in Westminster, Vermont. Presently before the Court are cross-motions for summary judgment filed by Appellants and Applicants. The Town has filed a response supporting Applicants' motion.

In this matter, Appellants are represented by Samuel H. Angell, Esq. Applicants are represented by Lawrence G. Slason, Esq. The Town is represented by Robert M. Fisher.¹

Legal Standard

To prevail on a motion for summary judgment, the moving party must demonstrate "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a), applicable here through V.R.E.C.P. 5(a)(2). When considering a motion for summary judgment, the nonmoving party receives the benefit of all reasonable doubts and inferences. Robertson v. Mylan Labs., Inc., 2004 VT 15, ¶ 15, 176 Vt. 356. When considering cross-motions for summary judgment, the Court considers each motion individually and gives the opposing party the benefit of all reasonable doubts and inferences. City of Burlington v. Fairpoint Commc'ns, Inc., 2009 VT 59, ¶ 5, 186 Vt. 332. In determining whether there is a dispute over any material fact, "we accept as true allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material." White v. Quechee Lakes Landowners' Ass'n, Inc., 170 Vt. 25, 28 (1999) (citation omitted); V.R.C.P. 56(c)(1)(A).

¹ Andrew N. Crosby had filed a notice of appearance in this matter as a self-represented interested person. Mr. Crosby did not submit any filings related to the pending motion.

Statement of Questions

In a April 9, 2024 Entry Order, this Court accepted Appellants' voluntary withdrawal of Questions then-numbered 2, 5 through 9, 12, 13, and 15 through 20 and ordered clarification of Question 10, noting that failure to do so would result in dismissal of the Question. In re Beam Lot Line Adjustment, No. 23-ENV-00104, slip op. at 5—6 (Vt. Super. Ct. Envtl. Div. Apr. 9, 2024) (Walsh, J.). The Court denied Applicants' motion to dismiss and/or clarify Questions 3, 4, 11, and 14. Id. Question 1 had been previously clarified. Id. On May 30, 2024, the parties filed a Stipulated Statement of Questions, voluntarily withdrawing Question 10 and setting forth the five remaining Questions before the Court. Stipulation Regarding Questions Presented (filed on May 30, 2024). They ask:

1. Whether it is a violation of 215(D)(1)(e) of the Zoning and Subdivision Bylaws to grant a Lot Line Adjustment when the Lot Line Adjustment results in Applicant Buck Adams having a lot with less than the minimal frontage on a Town Highway as allowed by the Zoning and Subdivision Bylaws?

...

3. Whether it is a violation of § 441(C), and § 215(D)(1)(e) of the Zoning and Subdivision Bylaws to grant a Boundary Line Adjustment when the adjustment creates only 45 feet of common boundary adjoining the two lots?

4. Would granting the Lot Line Adjustment as applied for in the application create a nonconforming lot in violation of §215(D)(1)(e) of the Zoning and Subdivision Bylaws when it would connect one lot to another lot with only 45 feet when 50 feet are required per §441(C), and §446(D)?

...

11. Whether it is a Violation of the Town Zoning and Subdivision Bylaws to grant a lot line adjustment which results in a lot without sufficient area and dimensional requirements as specified in §446(D)?

...

14. Whether Applicant's application should be processed as a minor subdivision pursuant to Section 830 and not a boundary line adjustment when the application and resulting adjusted lots do not have frontage required by the Bylaws?

Id.

Factual Background

We recite the following facts solely for the purposes of deciding the pending cross-motions. These facts do not constitute factual findings because factual findings cannot occur until after the Court conducts a trial. Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000) (mem.).

With respect to the pending motions, the parties have submitted a stipulated set of undisputed material facts with associated exhibits and supporting documentation in support of the motions. Each party has also submitted additional statements of undisputed material facts in support of each motion. The Court commends the parties for reaching such a stipulation that allows for the efficient adjudication of the pending motions and the matter before the Court. For ease of reference, the Court restates verbatim the stipulated facts herein as paragraphs 1 through 8. Having determined that additional facts are necessary to resolve the pending motions, and upon concluding that these additional facts are undisputed,² paragraphs beyond paragraph 8 are as determined by the Court. The Court has included a heading entitled “Additional Factual Background” to indicate the transition.

1. Normal L. Beam and Elaine T. Beam own a parcel of land containing 10.39 acres of land with frontage on James Road in the Town of Westminster as more particularly described in “*Plan Showing Boundary Line Adjustment Between Property Of Buck Adams And Norman L. & Elaine T. Beam*”, prepared by DiBernardo Associates, LLC, licensed land surveyor, dated April 4, 2023, last revised May 4, 2023. The property was conveyed by Warranty Deed of Albert T. Bolles, Trustee, to Norman L. and Elaine T. Beam dated April 5, 1982, recorded at Book 68, Page 56 of the Westminster Land Records. The parcel is identified in the Westminster Tax Map 7 as Lot 126.

2. Buck Adams is the owner of two contiguous parcels of land consisting of 53.4 acres with no road frontage as more particularly described in the Warranty Deed from Paul W. Cote to Buck Adams dated January 11, 2023, recorded at Book 214, Pages 563-564 of the Westminster Land Records. The Adams parcels consist of Tax Map Lot 117 of 16.7 acres and Tax Map Lot 153 of 36.7 acres.

3. Prior to the boundary line adjustment, the parcel of land owned by Norman and Elaine Beam (Tax Map Lot 126) and the parcel owned by Buck Adams (Tax Map Lot 153) had a 45 foot section of common boundary.

4. Russell R. Hodgkins and Barbara J. Hodgkins own a parcel of land of 10.375 acres identified as Tax Map Lot 126-1, as more particularly described in Warranty Deed from Albert T. Bolles, Trustee,

² Appellants did not respond to Applicants’ Supplemental Statement of Undisputed Material Facts. Pursuant to V.R.C.P. 56(e), when a party “fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may . . . (2) consider the fact undisputed for purposes of the motion; [or] (3) grant summary judgment if the motion and supporting materials – including the facts considered undisputed – show that the movant is entitled to it . . .” We consider the facts herein undisputed due to a lack of response.

to Russell R. Hodgkins dated April 5, 1982, recorded at Book 68, Page 57 of the Westminster Land Records. Further reference is made to the Warranty Deed of Russell R. Hodgkins to Russell R. Hodgkins and Barbara J. Hodgkins dated November 1, 1983, recorded at Book 68, Page 490 of the Westminster Land Records. The Hodgkins parcel has access from James Road over a 20-foot right of way, which extends through the lands of Norman and Elaine Beam, Tax Map Lot 126. The Hodgkins parcel adjoins the lands owned by Norman and Elaine Beam (Lot 126) and Buck Adams (Lot 153). No revision has been made or proposed to the Hodgkins boundary.

5. Christopher J. Potter owns a parcel of land of 38.8 acres identified as Tax Map Lot 116 being a portion of the lands as more particularly described in the Warranty Deed from Mary Jo Goldsmith, Chester W. Goldsmith and Christine C. Goldsmith to Christopher J. Potter and J. Malcolm Potter, Jr. dated October 25, 2006, recorded at Book 153, Page 28 of the Westminster Land Records. Further reference is made to the Quitclaim Deed of Dempsey M. Potter to Christopher J. Potter dated October 24, 2019, recorded at Book 204, Page 214 of the Westminster Land Records. The Potter parcel, Lot 116, shares a common boundary with the Buck Adams parcel, Lot 153. No revision has been made or proposed to the Potter boundary.

6. David C. Judd and Elaine M. Judd own a parcel of 10.10 acres, identified as Tax Map Lot 125, more particularly described in the Quitclaim Deed from Brattleboro Savings & Loan Association, F.A., to David C. Judd and Elaine M. Judd dated February 19, 1997, recorded at Book 104, Pages 10-14 of the Westminster Land Records. No revision has been made or proposed to the Judd boundary.

7. On September 14, 2023, the Westminster Development Review Board approved a boundary line adjustment between the Beam parcel (Lot 126) and the Adams parcel (Lot 153). As a result of the boundary line adjustment, the Beam parcel of 10.39 acres is reduced by 1.40 acres to 8.99 acres. As a result of the boundary line adjustment, the Adams parcel (Lot 153) of 36.7 acres is enlarged by 1.40 acres to 38.10 acres after adjustment.

8. The boundary line adjustment does not create a new lot. The number of lots that existed before the boundary line adjustment are the same number of lots that exist after the boundary line adjustment.

Additional Factual Background

9. The boundary line adjustment does not propose any form of new regulated land development or the erection of any new structure on either of the existing lots.

10. The Beam and Adams properties are within the Residential zoning district as defined by the 2017 Town of Westminster Zoning and Subdivision Bylaws (the Bylaws).

11. Prior to the proposed the boundary line adjustment, the Adams property was landlocked and lacked frontage on any road.

12. The boundary line adjustment provides the Adams property with 51.33 feet of frontage on James Road. The proposed boundary line adjustment is depicted on the Stipulated Exhibit B.

13. The Adams parcel is also benefited by a shared easement over an adjacent 20-foot right of way from James Road. See Stipulated Exhibit B.

14. The boundary line agreement proposes **approximately 1,600 feet** of common boundary between the Beam and Adams properties.

15. Applicants have entered into a Boundary Line Agreement approved by the Town to adjust the common boundary line.

Discussion

The Court addresses Appellants' Questions out of order because Question 14 addresses a threshold issue: whether alternative review of the application was required under the Bylaws.

I. Question 14: Applicability of Subdivision Bylaws

Appellants assert through Question 14 that the proposed boundary line adjustment required minor subdivision review pursuant to Bylaws § 830.

Bylaws § 830 address minor subdivision final plat approval. It references the definition of minor subdivision set forth in Article XV. Article XV defines "minor subdivision" as:

Any residential subdivision creating two lots, and which does not include any of the following: any new road in excess of eight hundred (800) feet in length, any multifamily housing project, planned unit developments, or a series of minor subdivisions of a tract of land occurring over a period of five years creating three or more lots.

Bylaws, Art. XV ("Minor Subdivision").

When interpreting zoning ordinances, we apply the rules of statutory construction. In re Appeal of Trahan, 2008 VT 90, ¶ 19, 184 Vt. 262. First, the Court will "construe words according to their plain and ordinary meaning, giving effect to the whole and every part of the ordinance." Id. (citations omitted). If there is no plain meaning, we will "attempt to discern the intent from other sources without being limited by an isolated sentence." In re Stowe Club Highlands, 164 Vt. 15, ¶ 7, 178 Vt. 29. The Court will therefore "adopt a construction that implements the ordinance's legislative purpose and, in any event, will apply common sense." In re Laberge Moto-Cross Track, 2011 VT 2, ¶ 8, 189 Vt. 578; see also In re Bjerke Zoning Permit Denial, 2014 VT 13, ¶ 22 (quoting Lubinsky v. Fair Haven Zoning Bd., 148 Vt. 47, 49, 195 Vt. 586 (1986)) ("Our goal in interpreting [a zoning regulation], like a statute, 'is to give effect to the legislative intent.'"). Finally, because zoning

regulations limit common law property rights, we resolve any uncertainty in favor of the property owner. Bjerke Zoning Permit Denial, 2014 VT 13, ¶ 22.

Based on the plain language of the Bylaws, it is clear that the application before the Court is not one for a minor subdivision but one for a boundary line adjustment. Minor subdivisions involve the creation of two lots. See Bylaws Art. XV (“Minor Subdivision”).³ Boundary line adjustments, however, by definition do not involve the creation of new lots. See Bylaws § 215(D)(1)(e).

It is undisputed that the application does not seek the creation of any new lots. Thus, the material facts are not in dispute and Applicants are entitled to judgment as a matter of law under Question 14. Thus, we **GRANT** Applicants’ motion and **DENY** Appellants’ motion with respect to Question 14.

II. Question 1: Frontage

Appellants assert through Question 1 that the application must be denied for failure to comply with lot frontage requirements.

Bylaws § 215(D)(1)(e), cited within Question 1, states that “[l]ot/boundary line adjustments that do not result in the creation of new lots or non-conformities” are approvable by the Zoning Administrator. The Bylaws define a “lot line adjustment” as “[t]he relocation of a common property boundary where an additional lot is not created and where an existing lot is reduced in size by the adjustment which complies with the Zoning District.” Bylaws Art. XV (“Lot Line Adjustment”).

Bylaws § 441(E) state that “no land development may be permitted on lots that do not have either frontage on a public road or public waters.” Bylaws § 441(E)(1). Alternatively, the DRB can approve access to such a road or waters “by a permanent easement or right-of-way, . . . at least fifty (50) feet in width and capable of being traversed by a motor vehicle.” *Id.* The minimum frontage requirement in the Residential District is 200 feet. See Bylaws § 446(D).

The Bylaws define “land development” as “[t]he construction, reconstruction, conversion, structural alteration, demolition, relocation or enlargement of any building or other structure, or of any mining, excavation or land fill, and any change in the use of any building or other structure, or land, or extension of use of land.” Bylaws Art. XV (“Development/Land Development”).

³ Appellants also assert that variance applications made pursuant to Bylaws § 313 require minor subdivision review. This assertion is not supported by the Bylaws, because neither § 313, 830, or Article XV, defining both “minor subdivision” and “variance,” make such review necessary when seeking a variance. See Bylaws §§ 313, 830, Art. XV. Further, the application before the Court is not one for a variance but for a boundary line adjustment. Thus, even if the Bylaws § 313 related review under Bylaws § 830, Appellants fail to provide any basis for concluding that a boundary line adjustment would be subject to variance provisions.

No regulated land development is proposed by the pending application on the Adams property.⁴ There is no requirement of the Bylaws that a lot gaining land from a boundary line adjustment comply with the dimensional standards if there is no regulated development proposed on the parcel or that otherwise subjects undeveloped lots subject to boundary line adjustments to minimum frontage requirements. Further, to the extent that the Beam property would be subject to the frontage requirements because it is improved by the existing Beam residence and associated infrastructure, it is not disputed that the parcel retains more than 200 feet of frontage on James Road. Thus, the Adams property as altered by the boundary line adjustment need not meet the minimum frontage requirements of the district at this time.

Further, to the extent that Appellants assert that a boundary line adjustment may not create a non-conforming parcel, such is not the case here. It is undisputed that the Adams property is landlocked and therefore non-conforming.⁵ The boundary line adjustment application before the Court seeks to lessen the degree of non-conformity in that regard to provide 51.33 feet of frontage on James Road.

Appellants assert that the purpose of a boundary line adjustment is to assist landowners who struggle to meet zoning requirements. The Town and Applicants agree. Here, the Adams property struggles to meet zoning requirements due to its landlocked nature and configuration. The boundary line adjustment furthers this undisputed purpose of boundary line adjustments by assisting the Adams property in becoming more conforming with the Bylaws than before the boundary line adjustment.

Thus, the material facts are not in dispute and Applicants are entitled to judgment as a matter of law on Question 1.

III. Question 3: Setbacks

Question 3 addresses whether the application must be denied due to the alleged failure to comply with Bylaws § 441(C), which relates to setbacks.

⁴ While not material to the pending motion it is not disputed that the Adams property will be timbered. As set forth in this Court's October 10, 2023 Entry Order on Appellants' motion to stay the permit, it is also undisputed by any party that timber harvesting is not regulated by the Bylaws. In re Beam Lot Line Adjustment Appeal, No. 24-ENV-00104, slip op. at 2 (Vt. Super. Ct. Env'tl. Div. Oct. 10, 2023) (Walsh, J.).

⁵ No party addresses the Bylaws' definition of "lot" which states that a "parcel, tract, or area of land . . . created by survey or plot plan . . . shall have frontage on an improved public street, or other means of access approved by the DRB." Bylaws Art. XV ("Lot"). The Court presumes that this language is why the parties do not dispute that the Adams property is non-conforming. It is undisputed that the boundary line adjustment provides that the Adams property will not have sufficient minimum frontage on James Road. Nothing within the definition of "lot" requires this frontage of the Adams property, on which there is no regulated land development proposed, to be consistent with the minimum frontage required when a lot has no development thereon. See Bylaws § 441(E).

Appellants assert that the Adams property does not comply with the setback because where the adjusted 1.4 acres meets the previous boundary between the Adams and Beam properties it is only 45 feet wide. This argument fails.

Bylaws § 440, entitled “Zoning District Use and Dimensional Standards,” state that “[n]o land development as defined herein shall be permitted to commence unless in conformance with the following regulations.” Bylaws § 441(C) addresses setbacks. Section 441 is entitled “General Standards and Definitions.” The Bylaws define “setback” as “[t]he minimum distance by which any structure may be separated from a road, right-of-way, lot line, wetland, or other feature. The open, unobstructed area required to be provided between the furthestmost projection of a building and the adjacent property line.” Bylaws Art. XV. The minimum setback in the Residential District for non-residential uses is 50 feet. Bylaws § 446(D).

While the parcel may narrow to under 50 feet at the former common boundary between the subject properties, no structures, as defined by the Bylaws Article XV (“Structure”) are proposed within this application. The setback requirements are therefore irrelevant as a matter of law to the application before the Court.

The Court concludes there are no material facts in dispute and Applicants are entitled to judgment as a matter of law on Question 3.

IV. Question 4: Common Boundary and/or Lot Depth

Question 4 addresses the application’s compliance with Bylaws § 446(D), which set the area and dimensional requirements for the Residential District.⁶

Further, Appellants’ Question 4 addresses “common boundary.” The Court is confused by this term as it is used nowhere in the Bylaws. The parties appear to assert that this relates to “lot depth.” Applicants do not dispute this assertion and so we apply it.⁷ Again, no land development is proposed in relation to the application such that it appears that the dimensional standards set forth in Bylaws § 441(D) are inapplicable to the application based on the plain language of the Bylaws. To the extent, however, that the lot depth requirement is applicable to the application, it is not disputed that

⁶ Appellants do not address Question 4 in their motion, but Applicants do. Question 4 is largely duplicative of Question 3 and similarly contains reference to a failure to have sufficient “common boundary.” To the extent that it is not duplicative and addresses compliance with Bylaws § 441(D) separately, we address it herein.

⁷ The Court notes that the Question states that the minimum “common boundary” is 50 feet in this district. Fifty feet is the setback required for non-residential uses. See Bylaws § 446(D). For the reasons set forth with respect to Question 3, and to the extent that Question 4 is duplicative of Question 3, setbacks are irrelevant here and the Question must be answered in the negative. Appellants in their motion with respect to Question 3 correctly state that the lot depth in the Residential District is 150 feet.

the new common boundary between the Beam and Adams properties exceeds the 150-foot minimum set forth in § 446(D).

Thus, the material facts are not in dispute and Applicants are entitled to judgment as a matter of law on Question 4.

V. Question 11: Lot Area

Question 11 reiterates both Question 3 and 4, with the addition of the application's compliance with the Bylaws' minimum lot area.⁸

Again, the plain language of the Bylaws indicate that because no land development is proposed in this application, the Bylaws § 446(D) dimensional standards are not applicable to the application before the Court. See Bylaws § 440 (stating that "no land development . . . shall be permitted to commence except in conformance with the follow regulations."). To the extent that Bylaws § 446(D) is applicable to the application, it is undisputed that both the Adams and Beam properties exceed the lot area in the Residential District. All other dimensional standards raised by Appellants have been addressed above.

Thus, there being no material facts in dispute, Applicants are entitled to judgment as a matter of law on Question 11.

Conclusion

For the foregoing reasons, the material facts are not in dispute and Applicants are entitled to judgment as a matter of law on all Questions before the Court. In so concluding, we answer each Question in Appellants' Statement of Questions in the negative. Thus, the application is approved, and this matter is remanded back to the Town to direct Applicants to conduct any ministerial acts to finalize this approval, to the extent any are required, such as filing with the Town a final survey or site plan depicting the revised boundary.

This concludes the matter before the Court. A Judgment Order accompanies this Decision. Electronically signed this 14th day of November 2024 pursuant to V.R.E.F. 9(D).



Thomas G. Walsh, Judge
Superior Court, Environmental Division

⁸ To the extent lot depth and frontage are within Question 11, it is duplicative of Questions 3 and 4 and the Court references the above conclusions on those issues.

